

OFFICIAL CODE OF GEORGIA ANNOTATED

2012 Supplement

Including Acts of the 2011 Extraordinary Session and the
2012 Session of the General Assembly

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 37 2009 Edition

Title 48. Revenue and Taxation (Chapters 7-18)

Including Notes to the Georgia Reports and the
Georgia Appeals Reports

**Place this Supplement Alongside the Corresponding
Volume of Main Set**

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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REVENUE AND TAXATION

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ARTICLE 1

GENERAL PROVISIONS

48-7-1. Definitions.

As used in this chapter, the term:

(1) “Corporation” includes, but is not limited to, all associations, professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies.

(2) “Deficiency” means the amount by which the tax imposed by this chapter or any prior law exceeds the amount shown as the tax due by the taxpayer upon his return or, if no amount is shown as the tax due by a taxpayer upon his return or if no return is made by the taxpayer, the amount determined by the commissioner to be the correct amount of the tax.

(3) “Dividend,” when used for the purpose of defining a taxable dividend, means any distribution made by a corporation out of its earnings or profits to its shareholders or members whether the distribution is made in cash, other property, or a stock different from the stock on which the dividend is paid. “Dividend” also includes, but is not limited to, the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings.

(4) “Fiscal year” means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has elected a year consisting of 52 to 53 weeks for federal income tax purposes, the term means the period so elected.

(5) “Income tax day” means December 31 of each calendar year or, if a person can show to the satisfaction of the commissioner that the person has already established the fiscal year as his taxable year for income tax reporting purposes, the last day of the person’s fiscal year.

(6) “Nonresidents” means taxable nonresidents and nontaxable nonresidents.

(7) “Nontaxable nonresident” means every individual who is not otherwise a resident of this state or a taxable nonresident of this state.

(7.1) “Owning property or doing business in this state” shall not include the following activities, either singularly or in the aggregate,

with respect to any person that is not otherwise subject to income taxation in the State of Georgia that has contracted with a commercial printer for any printing, including printing related activities, and distribution services to be performed in Georgia:

(A) The ownership by that person of tangible or intangible property located at the Georgia premises of the commercial printer for use by the printer in performing its services for the owner;

(B) The sale and distribution by that person of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(C) The activities performed by or on behalf of that person at the Georgia premises of the commercial printer which are directly related to the services provided by that commercial printer; or

(D) The printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia for or on behalf of that person.

(8) "Paid," for the purpose of the deductions under this chapter, means "paid or accrued" or "paid or incurred." The terms "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(9) "Received," for the purpose of the computation of the net income under this chapter, means "received or accrued." The term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(10)(A) "Resident" means:

(i) Every individual who is a legal resident of this state on income tax day;

(ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and

(iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

(B) Every individual who, having become a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed to continue to be a resident of this

state until the person shows to the satisfaction of the commissioner that he or she has become a legal resident or domiciliary of another state and that he or she does not come within division (iii) of subparagraph (A) of this paragraph. Upon such a showing with respect to any 12 month period immediately preceding income tax day, the person shall be taxable as a resident of this state only to the date of becoming a nonresident on an apportionment basis as prescribed in Code Section 48-7-85.

(C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time during the 12 month period immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) of this paragraph shall be taxable as a resident only from the date of becoming a resident on an apportionment basis as prescribed in Code Section 48-7-85.

(11) "Taxable nonresident" means:

(A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engages within this state, by himself or herself or by means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit, including, but not limited to, the rental of real or personal property located within this state or for use within this state. "Taxable nonresident" does not include a legal resident of another state whose only activity for financial gain or profit in this state consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed the lesser of 5 percent of the income received by the person for performing services in all places during any taxable year or \$5,000.00;

(B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of tangible property which at the time of the sale, exchange, or other disposition has a taxable situs within this state or who sells, exchanges, or otherwise disposes of intangible personal property which has acquired at the time of the sale, exchange, or other disposition a business or commercial situs within this state;

(C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery prize awarded by the Georgia Lottery Corporation;

(D) Every individual who is not a resident of this state for income tax purposes and who makes a withdrawal as provided for in paragraph (10) of subsection (b) of Code Section 48-7-27; and

(E)(i) For purposes of this subparagraph, the term:

(I) “Deferred compensation” means deferred compensation received from a nonqualified deferred compensation plan.

(II) “Nonqualified deferred compensation plan” means the same as it is defined in Section 3121(v)(2) of the Internal Revenue Code.

(ii) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engaged in a prior year within this state, by himself or herself, in activity for financial gain or profit and who receives income from such activity in the form of deferred compensation or income from the exercise of stock options and such income exceeds the lesser of 5 percent of the income received by the person in all places during the taxable year or \$5,000.00; provided, however, that this subparagraph shall not apply in the case of an individual who receives such income when the state is prohibited from taxing such income pursuant to federal law. For stock options granted and deferred compensation plans established before January 1, 2011, this subparagraph shall apply only to the portion earned on or after January 1, 2011. The commissioner shall by rule and regulation provide the method of determining the amount earned in Georgia using a “days worked in Georgia” method. Such earned amount shall be included in the Georgia income of the taxable nonresident.

(iii) Employers shall withhold Georgia income tax as provided in Article 5 of this chapter on all deferred compensation and stock options which are required to be included in Georgia income of the taxable nonresident. For purposes of withholding only:

(I) The employer shall use records that are available to them. However, if the records are not available, the employer may reasonably rely upon a written representation, signed under penalties of perjury, from the employee of the number of days worked in Georgia. The employer shall only be held liable if the employer had actual or constructive knowledge that the employee’s written representation was false or contained erroneous information; and

(II) The employer may elect to determine the number of days worked in Georgia by assuming the employee worked in Georgia only during the time the employee was a resident of Georgia.

(iv) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this paragraph.

(12) “Taxable year” means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net income is computed under this chapter. (Ga. L. 1931, Ex. Sess., p. 24, §§ 2, 35; Ga. L. 1931, p. 7, § 85; Code 1933, §§ 92-3002, 92-3302(f); Ga. L. 1937, p. 109, § 1; Ga. L. 1937-38, Ex. Sess., p. 150, § 1; Ga. L. 1941, p. 221, § 1; Ga. L. 1957, p. 397, §§ 1, 2; Ga. L. 1962, p. 454, § 1; Ga. L. 1962, p. 703, § 1; Ga. L. 1963, p. 16, § 1; Ga. L. 1975, p. 858, § 1; Ga. L. 1976, p. 980, § 1; Code 1933, § 91A-3501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 61; Ga. L. 1994, p. 597, § 1; Ga. L. 1998, p. 124, § 2; Ga. L. 2002, p. 372, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159, § 7/HB 488; Ga. L. 2008, p. 159, § 6/HB 1014; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 525, § 1/HB 1198; Ga. L. 2011, p. 297, § 2/HB 346.)

The 2010 amendment, effective January 1, 2011, deleted “and” at the end of subparagraph (11)(C), added “; and” at the end of subparagraph (11)(D) and added subparagraph (11)(E). See the editor’s note for applicability.

The 2011 amendment, effective May 11, 2011, in subparagraph (11)(E), designated the existing provisions as division (11)(E)(ii), added division (11)(E)(i), added the second through fourth sentences in division (11)(E)(ii), and added divisions (11)(E)(iii) and (11)(E)(iv). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 525, § 2, not codified by the General Assembly, provides that this Act shall be applicable

to all taxable years beginning on or after January 1, 2011.

Ga. L. 2011, p. 297, § 5(b), not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

ARTICLE 2

IMPOSITION, RATE, AND COMPUTATION; EXEMPTIONS

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General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-21. Taxation of corporations.

(a) Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to 6 percent of its Georgia taxable net income. Georgia taxable net income of a corporation shall be the corporation’s taxable income from property owned or from business

done in this state. A corporation's taxable income from property owned or from business done in this state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with the adjustments provided for in subsection (b) of this Code section and allocated and apportioned as provided in Code Section 48-7-31.

(b)(1)(A) When interest income is derived from obligations of any state or political subdivision except this state and political subdivisions of this state, the interest income shall be added to taxable income to the extent that the interest income is not included in gross income for federal income tax purposes. Interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income tax shall also be added to taxable income.

(B) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent such interest or dividends are includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. There shall also be subtracted from taxable income any income derived from the authorized activities of a domestic international banking facility operating pursuant to the provisions of Article 5A of Chapter 1 of Title 7, the "Domestic International Banking Facility Act," and any income arising from the conduct of a banking business with persons or entities located outside the United States, its territories, or possessions. Any amount subtracted pursuant to this subparagraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(2) There shall be added to taxable income any taxes on, or measured by, net income or net profits paid or accrued within the taxable year imposed by the authority of the United States or any foreign country, by any state except the State of Georgia, or by any territory, county, school district, municipality, or other tax subdivision of any state, territory, or foreign country to the extent such taxes are deducted in determining federal taxable income.

(3) No portion of any deductions or losses which occurred in a year in which the taxpayer was not subject to taxation in this state including, but not limited to, net operating losses may be deducted in any tax year. When the federal adjusted gross income or net income of a corporation includes such deductions or losses, an adjustment deleting them shall be made under rules established by the commissioner. The provisions of this subsection shall not prohibit the

carry-over of any deductions or losses including, but not limited to, net operating losses of any taxpayer which were incurred in a year or years in which the taxpayer was subject to methods of taxation in this state other than the corporate income tax.

(4) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income. The commissioner shall provide for needed adjustments by regulation.

(5) All elections under Section 338 of the Internal Revenue Code of 1986 shall also apply under this article.

(6) This article shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this article. Those exemptions and the exemptions provided for by federal law and treaty shall be deducted on forms provided by the commissioner.

(7) All elections made by corporate taxpayers under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article except elections involving consolidated corporate returns and Subchapter "S" elections which shall be treated as follows:

(A)(i) Affiliated corporations which file a consolidated federal income tax return must file separate income tax returns with this state unless they have prior approval or have been requested to file a consolidated return by the department. The commissioner shall by regulation provide the time period within which the permission must be requested. A request for permission beyond such time period will not be considered and will result in the filing of separate income tax returns for the applicable year.

(ii) No depository financial institution shall be deprived of the benefit of any exemption, deduction, or credit authorized by this title as a consequence of its election to file otherwise lawful consolidated returns with its parent organization or any corporate subsidiaries with respect to any state or local tax levied against such depository financial institution as a result of this title. As used in this division, the term:

(I) "Bank" means any financial institution chartered under the laws of this state or under the laws of the United States and domiciled in this state which is authorized to receive deposits in this state and which has a corporate structure authorizing the issuance of capital stock.

(II) "Depository financial institution" means a "bank" or a "savings and loan association."

(III) "Savings and loan association" means any financial institution, other than a credit union, chartered under the laws of this state or under the laws of the United States and domiciled in this state which is authorized to receive deposits in this state and which has a mutual corporate form;

(B) Subchapter "S" elections apply only if all stockholders are subject to tax in this state on their portion of the corporate income. If all nonresident stockholders pay the Georgia income tax on their portion of the corporate income, the election shall be allowed.

(8) There shall be subtracted from taxable income dividends received by:

(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received. Amounts to be subtracted under this subparagraph shall include the following, as defined by the Internal Revenue Code of 1986:

- (i) Qualified electing fund income;
- (ii) Subpart F income; and
- (iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and

(B) Corporations from affiliated corporations within the United States, when the corporation receiving the dividends is engaged in business in this state and is subject to the payment of taxes under the income tax laws of this state, to the extent that the dividends have been included in net income under this Code section. Dividends from affiliates shall be reduced by any expenses directly attributable to the dividend income.

(9) Where a corporation's salary and wage deductions are reduced in computing federal taxable income because the corporation has taken a federal jobs tax credit which required, as a condition to using the federal jobs tax credit, the elimination of salary and wage deductions, the eliminated salary and wage deductions shall be subtracted from taxable income.

(10) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(10.1) Net operating losses for corporations shall be treated as follows:

(A) For any taxable year in which the taxpayer takes a federal net operating loss deduction on its federal income tax return, the amount of such deduction shall be added back to federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer's federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year;

(B) The Georgia net operating loss for such taxable year shall be computed by making the adjustments to federal taxable income required by this article and in the case of corporations doing business both within and outside Georgia, by apportioning and allocating to Georgia, as provided in Code Section 48-7-31, only the amount of the loss attributable to operations within Georgia. The term "Georgia net operating loss" shall mean the loss computed as provided in this paragraph. In the event the net Georgia adjustments completely offset a federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the federal net operating loss shall constitute Georgia taxable net income after any such excess has been allocated and apportioned to Georgia as provided in Code Section 48-7-31. The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss for the applicable year carried back or carried over in the manner and for the number of years as provided in this paragraph;

(C) In the event the taxpayer elects to forgo the carryback period for the federal net operating loss as allowed under the Internal Revenue Code, the taxpayer shall also forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo the carryback period for the federal net operating loss, the election to forgo the net operating loss period shall not be allowed for Georgia purposes. If the taxpayer does not have a federal net operating loss, the taxpayer may make an irrevocable election to forgo the carryback period for the Georgia net operating loss, provided that an affirmative statement is attached to the Georgia return for the year of the loss. Such election must be made on or before the due date for

filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted;

(D) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of 1986, as amended, as they relate to net operating losses also apply for Georgia purposes. The commissioner shall by regulation provide the method of determining how such sections apply;

(E) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, a claim for such refund must be filed within three years after the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted. Such tax refund shall be deemed to have been erroneously assessed and collected, and shall be paid under the provisions of Code Section 48-2-35; provided, however, that no interest shall accrue or be paid for any period prior to the close of the taxable year in which such net operating loss arises and no interest shall be paid if the claim for refund is processed within 90 days from the last day of the month in which the claim for such refund is filed; and

(F) The commissioner shall have the authority to promulgate regulations regarding net operating losses with respect to this paragraph and with respect to consolidated return net operating losses.

(11) There shall be subtracted from taxable income a portion of qualified payments to minority subcontractors, as provided in Code Section 48-7-38.

(12) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(13) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(14) There shall be subtracted from taxable income the deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in the corporation's taxable income, as defined under the Internal Revenue Code of 1986.

(15) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(16) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4. (Ga. L. 1931, Ex. Sess., p. 26, § 4; Code 1933, § 92-3102; Ga. L. 1935, p. 121, § 1; Ga. L. 1937, p. 109, § 3; Ga. L. 1937-38, Ex. Sess., p. 150, § 3; Ga. L. 1949, Ex. Sess., p. 18, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 625, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 2; Ga. L. 1964, p. 67, § 1; Ga. L. 1969, p. 114, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 646, § 1; Ga. L. 1976, p. 980, § 1; Ga. L. 1977, p. 1133, § 2; Ga. L. 1979, p. 888, § 1; Code 1933, § 91A-3602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 63; Ga. L. 1979, p. 888, § 3; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 1350, § 11; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 1644, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 13, § 48; Ga. L. 1993, p. 1649, § 1; Ga. L. 1996, p. 117, § 8; Ga. L. 1996, p. 130, § 8; Ga. L. 1996, p. 181, § 6; Ga. L. 1999, p. 13, § 1; Ga. L. 2000, p. 1445, § 1; Ga. L. 2005, p. 30, § 2/HB 191; Ga. L. 2005, p. 157, § 1/HB 282; Ga. L. 2005, p. 159, §§ 8-10, 11/HB 488; Ga. L. 2007, p. 271, § 1/SB 184; Ga. L. 2008, p. 898, § 4/HB 1151; Ga. L. 2009, p. 796, § 1/HB 379; Ga. L. 2010, p. 895, § 2/HB 1138.)

The 2010 amendment, effective June 3, 2010, substituted the present provisions of paragraph (b)(5) for the former provisions, which read: "Reserved". See editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 895, § 4(c), not codified by the General Assembly, provides that the 2010 amendment shall apply with respect to stock purchases and sales occurring on or after June 3, 2010.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-26. (For effective date, see note.) Personal exemptions.

(a) As used in this Code section, the term "dependent" shall have the same meaning as in the Internal Revenue Code of 1986.

(b)(1) (For effective date, see note.) An exemption of \$7,400.00 shall be allowed as a deduction in computing Georgia taxable income of a taxpayer and spouse, but only if a joint return is filed. If a taxpayer and spouse file separate returns, \$3,700.00 shall be allowed to each person as a deduction in computing Georgia taxable income.

(2) (For effective date, see note.) An exemption of \$2,700.00 shall be allowed as a deduction in computing Georgia taxable income for all taxpayers other than taxpayers who qualify for the exemption provided for in paragraph (1) of this subsection.

(3) (For effective date, see note.) Commencing with the taxable year beginning January 1, 2003, an exemption of \$3,000.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.

(c) No exemption shall be allowed under this Code section for any dependent who has made a joint return with such dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(d) A deduction in lieu of a personal exemption deduction shall be allowed an estate or a trust as follows:

(1) An estate — \$2,700.00; and

(2) A trust — \$1,350.00. (Code 1981, § 48-7-26, enacted by Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 381, § 1; Ga. L. 1998, p. 1, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2012, p. 257, § 2-1/HB 386.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2013. Until January 1, 2013, subsection (b) reads as follows: “(b)(1) An exemption of \$5,400.00 shall be allowed as a deduction in computing Georgia taxable income of a taxpayer and spouse, but only if a joint return is filed.

“(2) An exemption of \$2,700.00 shall be allowed as a deduction in computing Georgia taxable income for each taxpayer other than a taxpayer who files a joint return.

“(3)(A) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, an exemption of \$2,000.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.

“(B) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1998, an exemption of \$2,500.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.

“(C) For taxable years beginning on or after January 1, 1998, an exemption of \$2,700.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.

“(4) Commencing with the taxable year beginning January 1, 2003, an exemption of \$3,000.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.”

The 2012 amendment, effective January 1, 2013, in paragraph (b)(1), substituted “\$7,400.00” for “\$5,400.00” in the

first sentence, and added the second sentence; substituted “all taxpayers other than taxpayers who qualify for the exemption provided for in paragraph (1) of this subsection” for “each taxpayer other than a taxpayer who files a joint return” in paragraph (b)(2); deleted former paragraph (b)(3), relating to taxable years beginning on or after January 1, 1994, January 1, 1995, and January 1, 1998; and redesignated former paragraph (b)(4) as present paragraph (b)(3). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-27. (For effective date, see note.) Computation of taxable net income.

(a) Georgia taxable net income of an individual shall be the taxpayer’s federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:

(A) In the case of a single taxpayer or a head of household, \$2,300.00;

(B) In the case of a married taxpayer filing a separate return, \$1,500.00;

(C) In the case of a married couple filing a joint return, \$3,000.00;

(D) An additional deduction of \$1,300.00 for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer’s taxable year. An additional deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer’s spouse and the spouse has attained the age of 65 before the close of the taxable year; and

(E) An additional deduction of \$1,300.00 for the taxpayer if the taxpayer is blind at the close of the taxable year. An additional deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer’s spouse and the spouse is blind at the close of the taxable year. For the purposes of this subparagraph, the determination of whether the taxpayer or the spouse is blind shall be made at the close of the taxable year except that, if either the taxpayer or the spouse dies during the taxable year, the determination shall be made as of the time of the death;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection (b) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual’s federal adjusted gross income because

the individual has taken a federal jobs tax credit which requires, as a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, for taxable years beginning on or after January 1, 1989, no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5) (For effective date, see note.) (A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of \$8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of \$10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of \$11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of \$12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of \$13,000.00;

(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of \$13,500.00 per year received from any source;

(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of \$14,000.00;

(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of \$14,500.00;

(ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of \$15,000.00;

(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of \$25,000.00;

(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of \$30,000.00;

(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of \$35,000.00; and

(xiii) For taxable years beginning on or after January 1, 2012, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

(iii) Is 65 years of age or older during any part of the year.

(E) For the purposes of this paragraph, retirement income shall include but not be limited to interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than \$4,000.00 of an individual's earned income. Earned income in excess of \$4,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this subparagraph.

(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph.

(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;

(6) A portion of the qualified payments to minority subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;

(9) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such taxpayer and to establish the same basis for federal and state income tax purposes;

(10) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

(11) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding \$2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by \$400.00 for each \$1,000.00 of federal adjusted gross income over \$100,000.00 for a joint return or \$50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1) For taxable years beginning on or after January 1, 2007:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding \$2,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the borders of the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders.

(12.1)(A) Disability income from the United States Department of Veterans Affairs received by a disabled veteran who is a citizen and resident of Georgia.

(B) As used in this paragraph, the term "disabled veteran" means any wartime veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being at least 90 percent totally and permanently disabled and entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(i) Loss or permanent loss of use of one or both feet;

- (ii) Loss or permanent loss of use of one or both hands;
- (iii) Loss of sight in one or both eyes; or

(iv) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye.

(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of \$10,000.00 incurred in accordance with the “National Organ Procurement Act.”

(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person’s liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;

(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;

(14) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

(15) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

(b)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal

income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

(6) Reserved.

(7) Except as otherwise provided in paragraph (4) of subsection (a) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

(8) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

(9) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection (a) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(12) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(13) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(c) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(d)(1)(A) As used in this paragraph, the term "individual" shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter "S" corporations may make an adjustment to federal adjusted gross income for Subchapter "S" corporation income where another state does not recognize a Subchapter "S" corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter "S" corporation, partnership, or limited liability company. In multitiered situations, the adjustment for such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter "S" corporation shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for such Subchapter "S" corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter "S" corporation is first required to file a Georgia income tax return. For a Subchapter "S" corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter "S" corporation in that year. Shareholders of a federal Subchapter "S" corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation. (Code 1933, § 92-3107, enacted by Ga. L. 1971, p. 605, § 4; Ga. L. 1975, p. 843, § 1; Ga. L. 1978, p. 1456, § 1; Ga. L. 1979, p. 888, § 2; Code 1933, § 91A-3607, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 67; Ga. L. 1979, p. 888, § 4; Ga. L. 1980, p. 10, §§ 17, 18; Ga. L. 1981, p. 1857, §§ 35, 36; Ga. L. 1981, p. 1903, §§ 3, 4; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1644, § 2; Ga. L. 1986, p. 749, § 1; Ga. L. 1986, p. 1480, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 475, § 2; Ga. L. 1989, p. 1112, §§ 1-3; Ga. L. 1989, Ex. Sess., p. 5, § 1; Ga. L. 1990, p. 1369, § 1; Ga. L. 1992, p. 1296, § 1; Ga. L. 1992, p. 2977, § 1; Ga. L. 1994, p. 381, § 2; Ga. L. 1998, p. 1, § 2; Ga. L. 1998, p. 1515, § 1; Ga. L. 1998, p. 1516, § 1; Ga. L. 1999, p. 13, § 2; Ga. L. 2000, p. 408, § 1; Ga. L. 2001, p. 76, §§ 2, 3; Ga. L. 2002, p. 372, §§ 2, 3; Ga. L. 2002, p. 1149, § 1; Ga. L. 2003, p. 637, § 1; Ga. L. 2003, p. 665, §§ 4, 5; Ga. L. 2004, p. 102, § 1; Ga. L. 2005, p. 18, § 1/HB 263;

Ga. L. 2005, p. 30, § 1/HB 191; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 157, § 2/HB 282; Ga. L. 2005, p. 159, §§ 13, 14/HB 488; Ga. L. 2005, p. 529, § 1/HB 556; Ga. L. 2006, p. 526, § 1/HB 1160; Ga. L. 2007, p. 112, § 2/HB 225; Ga. L. 2007, p. 271, §§ 3, 4/SB 184; Ga. L. 2008, p. 159, §§ 7, 8/HB 1014; Ga. L. 2008, p. 292, § 4/HB 977; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2008, p. 898, §§ 6, 7/HB 1151; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 4/HB 410; Ga. L. 2009, p. 796, § 2/HB 379; Ga. L. 2010, p. 9, § 4-1/HB 1055; Ga. L. 2012, p. 108, § 1/HB 808; Ga. L. 2012, p. 257, § 2-2/HB 386.)

Delayed effective date. — Paragraph (a)(5), as set out above, becomes effective January 1, 2013. Until January 1, 2013, paragraph (a)(5) reads as follows: “(a)(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

“(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of \$8,000.00 per year received from any source;

“(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of \$10,000.00 per year received from any source;

“(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of \$11,000.00;

“(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of \$12,000.00;

“(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of \$13,000.00;

“(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of \$13,500.00 per year received from any source;

“(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of \$14,000.00;

“(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of \$14,500.00;

“(ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of \$15,000.00;

“(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of \$25,000.00;

“(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of \$30,000.00;

“(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of \$35,000.00;

“(xiii) For taxable years beginning on or after January 1, 2012, and prior to January 1, 2013, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;

“(xiv) For taxable years beginning on or after January 1, 2013, and prior to January 1, 2014, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in

division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$100,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;

“(xv) For taxable years beginning on or after January 1, 2014, and prior to January 1, 2015, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$150,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;

“(xvi) For taxable years beginning on or after January 1, 2015, and prior to January 1, 2016, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$200,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph; and

“(xvii) For taxable years beginning on or after January 1, 2016, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an exclusion of all retirement income from any source for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

“(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

“(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

“(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

“(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

“(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

“(iii) Is 65 years of age or older during any part of the year.

“(E) For the purposes of this paragraph, retirement income shall include but not be limited to interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than \$4,000.00 of an individual's earned income. Earned income in excess of \$4,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this subparagraph.

“(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph.

“(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;”

The , effective May 12, 2010, in subparagraph (a)(5)(A), substituted “shall be subject an” for “not to exceed the” in the introductory paragraph, deleted “and” at

the end following division (a)(5)(A)(xi), in division (a)(5)(A)(xii), inserted “and prior to January 1, 2012,” and substituted a semicolon for a period at the end, and added divisions (a)(5)(A)(xiii) through (a)(5)(A)(xvii); deleted “, so that the total amount excluded on such joint return may if otherwise allowable be up to twice the individual exclusion amount” following “amount” at the end of subparagraph (a)(5)(B); substituted “exclusions” for “exclusion” in subparagraph (a)(5)(C); in subparagraph (a)(5)(D), substituted “exclusions” for “exclusion”, inserted “but less than 65 years of age” at the end of division (a)(5)(D)(i), added “or” at the end of division (a)(5)(D)(ii), and added division (a)(5)(D)(iii); and substituted “exclusions” for “exclusion” in the last sentence of subparagraph (a)(5)(E) and near the end of subparagraph (a)(5)(F).

The 2012 amendments. — The first 2012 amendment, effective April 16, 2012, added paragraph (a)(12.1). The second 2012 amendment, effective January 1, 2013, in paragraph (a)(5), added “and” at the end of division (a)(5)(A)(xii), in division (a)(5)(A)(xiii), deleted “and prior to January 1, 2013” following “January 1, 2012” near the beginning and substituted a period for a semicolon at the end, and deleted divisions (a)(5)(A)(xiv) through (a)(5)(A)(xvii). See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “to” was inserted between “subject” and “an” in subparagraph (a)(5)(A).

48-7-28. Reciprocity.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

Editor’s notes. — Ga. L. 2012, p. 108, § 2/HB 808, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund-eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-28.2. Employer social security credits.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-28.4. Adjustments to taxes; disallowing expenses paid to certain real estate investment trusts; procedures, conditions, and limitations.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following “as amended” at the end of subsection (i).

48-7-29. Tax credits for rural physicians.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-29.1. Retrofitting certain single-family homes with accessibility features.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-29.12. (For effective date, see note.) Tax credit for qualified donation of real property; carryover of credit; appraisals; transfer of credit; penalty.

(a) As used in this Code section, the term:

(1) “Conservation easement” means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which are consistent with at least two conservation purposes.

(2) “Conservation purpose” means any of the following:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitat consistent with state wildlife conservation policies;

(C) Protection of outdoor recreation consistent with state outdoor recreation policies;

(D) Protection of prime agricultural or forestry lands; and

(E) Protection of cultural sites, heritage corridors, or archeological and historic resources.

(3) “Donated property” means the real property of which a qualified donation is made pursuant to this Code section.

(4) “Eligible donor” means any person who owns an interest in a qualified donation.

(5) “Fair market value” means the value of the donated property as determined pursuant to subsections (c.1) and (c.2) of this Code section.

(6) “Qualified donation” means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of 100 percent of all right, title, and interest in the entire parcel of donated real property, and the donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization for use in a manner consistent with at least two conservation purposes. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of a conservation easement. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

(7) “Related person” has the meaning provided by Code Section 48-7-28.3.

(8) “Substantial valuation misstatement” means a valuation such that the claimed value of any property on the appraisal as submitted to the State Properties Commission is 150 percent or more of the amount determined to be the correct amount of such valuation pursuant to subsections (c.1) and (c.2) of this Code section.

(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for each qualified donation under this Code section.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market

value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of the State Property Commission's determination and a copy of a certification issued by the Department of Natural Resources that the donated property is suitable for conservation purposes and meets the following additional requirements, where applicable:

(1) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;

(2) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of such donation is prohibited on such property;

(3) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;

(4) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;

(5) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;

(6) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

(7) Mining on the property is prohibited; and

(8) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the “List of Non-Native Invasive Plants in Georgia” developed by the Georgia Exotic Pest Council is prohibited.

(c.1) For each application for certification, the Department of Natural Resources shall require submission of an appraisal of the qualified donation by the taxpayer along with a nonrefundable \$5,000.00 application fee; provided, however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant. The appraisal required by this subsection shall be a full narrative appraisal and include:

(1) A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

(2) An affidavit signed by the appraiser which includes a statement specifying:

(A) The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

(B) Whether a subdivision analysis was used in the appraisal;

(C) Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and

(D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

Appraisals received by the Department of Natural Resources shall be forwarded to the State Properties Commission for review. The State Properties Commission shall approve the appraisal amount submitted or recommend a lower amount based on its review and inform the Department of Natural Resources of its determination. The State Properties Commission shall be authorized to promulgate any rules and regulations necessary to administer the provisions of this subsection. Any appraisal deemed to contain a substantial valuation misstatement shall be submitted to the Georgia Real Estate Commission for further investigation and disciplinary action. Upon receipt of the State Properties Commission’s determination, the Department of Natural Resources may proceed with the certification process.

(c.2) The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer subsections (c) and (c.1) of this Code section. A final determination by the Department of

Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the five years prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(d.1) Any tax credits under this Code section earned by a taxpayer in the taxable years beginning on or after January 1, 2013, and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(4) Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(5) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on such appraisal as submitted to the State Properties Commission results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in paragraph (1) of this subsection; or

(ii) Ten thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in paragraph (1) of this subsection for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to

which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297, § 3/HB 346; Ga. L. 2012, p. 257, § 3-1/HB 386.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. Until January 1, 2013, this Code section reads as follows: “(a) As used in this Code section, the term:

“(1) ‘Fair market value’ means the value of the donated property established by a property appraisal or appraisals meeting the requirements of Section 170 of Title 26 of the United States Code, to be submitted in such manner as the commissioner may by regulation require.

“(2) ‘Qualified donation’ means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of 100 percent of all right, title, and interest in the entire parcel of donated real property, which donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of an interest in real property which qualifies as a conservation easement under paragraph (4) of Code Section 12-6A-2. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase

building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

“(3) ‘Eligible donor’ means any person who owns an interest in a qualified donation.

“(4) ‘Related person’ has the meaning provided by Code Section 48-7-28.3.

“(5) ‘Substantial valuation misstatement’ means a valuation such that the value of any property claimed on any return of tax imposed under this chapter, or on any claim for refund of such tax, is 150 percent or more of the amount determined to be the correct amount of such valuation.

“(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for each qualified donation of real property for conservation purposes.

“(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the dona-

tion is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

“(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of \$1 million, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

“(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer’s income tax return a copy of a certification by the Department of Natural Resources that the donated property is suitable for conservation purposes. The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer this subsection, including, but not limited to, policies to guide the determination of whether or not donated property is suitable for conservation purposes. A final determination by the Department of Natural Resources with respect to the suitability of donated property for conservation purposes shall be subject to review and appeal under Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’

“(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer’s succeeding ten years’ tax liability.

However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer’s succeeding years’ tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years’ tax liability.

“(2) Only one qualified donation may be made with respect to any real property that was, in the year prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

“(d.1) Any tax credits under this Code section earned by a taxpayer and previously claimed but not used by such taxpayer against such taxpayer’s income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

“(1) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor’s tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

“(2) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

“(3) In no event shall the amount of the tax credit under this subsection claimed and allowed for a taxable year exceed the transferee’s income tax liability. Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

“(4) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that

such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

“(e)(1) Whenever:

“(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

“(B) The claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

“then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

“(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

“(A) The greater of:

“(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in subparagraph (e)(1)(B) of this Code section; or

“(ii) One thousand dollars; or

“(B) One hundred twenty-five percent of the gross income received by the person described in subparagraph (e)(1)(A) of this Code section for the preparation of the appraisal.

“(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper

“(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty

under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

“(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.”

The 2011 amendment, effective January 1, 2012, added subsection (d.1). See editor's note for applicability.

The 2012 amendment, effective January 1, 2013, rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 297, § 5(d), not codified by the General Assembly, provides that the amendment of this Code section by that Act shall become effective on January 1, 2012, and shall apply to all taxable years beginning on or after January 1, 2012.

Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-7-29.14. Income tax credit for clean energy property.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Environmental Finance Authority.

(2) “Business property” means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(3) “Clean energy property” includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) Lighting retrofit projects. “Lighting retrofit project” means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) Energy efficient buildings. “Energy efficient building” means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent;

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment; and

(E) Biomass equipment to convert wood residuals into electricity through gasification and pyrolysis.

(4) “Cost” means:

(A) In the case of clean energy property owned by the taxpayer, cost is the aggregate funds actually invested and expended by a taxpayer to put into service the clean energy property; and

(B) In the case of clean energy property the taxpayer leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) “Installation” means the year in which the clean energy property is put into service and becomes eligible for a tax credit allowed by this Code section.

(6) “Renewable biomass qualified facility” means a renewable biomass qualified facility as defined by the Federal Energy Regulatory Commission which facility meets the open loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue Code.

(7) “Wood residuals” means wood residuals that include land-clearing residue, urban wood residue, and pellets and do not include wood from any United States national forest.

(b) A tax credit under this Code section is subject to the following limits:

(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008, and December 31, 2014; provided, however, this credit shall be further subject to the following conditions and limitations:

(A) A credit allowed by this Code section shall be taken for the taxable year in which the clean energy property is installed and may be taken against income tax or, if the taxpayer is an insurance company, against gross premium tax; provided, however, that for any credit under this Code section which is allowed for calendar year 2012, 2013, or 2014, the entire credit may not be taken for the year in which the property is placed in service but must be taken in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed;

(B) A taxpayer that claims a credit allowed under this subsection shall not be eligible to claim any other credit under this subsection with respect to the same clean energy property;

(C) A taxpayer may not take the credit allowed in this subsection for clean energy property the taxpayer leases from another unless the taxpayer obtains the lessor’s written certification that the

lessor will not claim a credit under this subsection with respect to the same clean energy property; and

(D) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the installment of the clean energy property occurred. No such credit shall be allowed the taxpayer against prior years' tax liability.

To claim a credit allowed by this paragraph, the taxpayer shall provide any information required by the authority or department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the authority or department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection;

(2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified facility shall be allowed a credit against the tax imposed by this article in an amount not to exceed the actual amount certified by the Georgia Forestry Commission to the taxpayer. The value of such credit shall be determined on a per tonnage basis. Such certification shall be based upon vouchers provided to the taxpayer by the renewable biomass qualified facility to whom the wood residuals are provided for the purpose of providing bioelectric power to a third party. The Georgia Forestry Commission shall calculate and attribute a dollar value to such wood residuals;

(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

- (A) For calendar year 2008, \$2.5 million;
- (B) For calendar year 2009, \$2.5 million;
- (C) For calendar year 2010, \$2.5 million;
- (D) For calendar year 2011, \$2.5 million;
- (E) For calendar year 2012, \$5 million;
- (F) For calendar year 2013, \$5 million; and
- (G) For calendar year 2014, \$5 million.

(4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commis-

sioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(B) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section in a calendar year exceed the limitations specified in paragraph (3) of this subsection. In the event a taxpayer filed a timely application for such credit but is not allowed all or part of the credit amount such taxpayer would be authorized to receive because the limitations specified in paragraph (3) of this subsection have been reached, the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application. With respect to the credit allocation in subsequent years, taxpayers on the priority waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent years;

(5) The credit allowed by this subsection shall not exceed the following amounts:

(A) For all types of clean energy property placed into service for any purpose other than single family residential, the credit allowed by this subsection may not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any clean energy property:

(i) A ceiling of \$500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating, wind equipment, and biomass equipment as described in subparagraphs (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

(ii) The sum of \$100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(iii) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(3)(B) of this Code section, the sum of \$100,000.00;

(iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code section, the sum of \$0.60 per square foot of the building with a maximum of \$100,000.00; and

(v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at \$1.80 per square foot of the building, with a maximum of \$100,000.00; and

(B) The following ceilings apply to clean energy property placed in service for single family residential purposes, the lesser of 35 percent of the cost or:

(i) The sum of \$2,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors, Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

(ii) The sum of \$10,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(A) of this Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of \$2,000.00 per installation for Energy Star certified geothermal heat pump systems applies as described in subparagraph (a)(3)(B) of this Code section; and

(6)(A) Where the amount of any credits allowed by this Code section except for the credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20

established by this subsection shall not constitute income to the taxpayer.

(B) In no event shall the total amount of the tax credit under paragraph (2) of subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The authority and department shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section. Specifically, the authority and department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

(d) The authority and the department shall provide an annual report of:

- (1) The number of taxpayers that claimed the credits allowed in this Code section;
- (2) The cost of business property and clean energy property with respect to which credits were claimed;
- (3) The type of clean energy property installed and the location;
- (4) A determination of associated energy and economic benefits to the state; and
- (5) The total amount of credits allowed. (Code 1981, § 48-7-29.14, enacted by Ga. L. 2008, p. 841, § 1/HB 670; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2010, p. 1163, § 3/HB 1069; Ga. L. 2011, p. 297, § 3A/HB 346.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" at the end of paragraph (a)(1). The second 2010 amendment, effective June 4, 2010, added the last sentence in subparagraph (b)(4)(B). See the editor's note for applicability.

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2014" for "December 31, 2012" in the middle of paragraph (b)(1); added the proviso at the end of subparagraph (b)(1)(A); in paragraph (b)(3), deleted "and" at the end of subparagraph (b)(3)(D), substituted "\$5 million," for "\$2.5 million." in subpara-

graph (b)(3)(E), and added subparagraphs (b)(3)(F) and (b)(3)(G); and in subparagraph (b)(4)(B), in the second sentence, deleted "to which" following "credit amount", inserted "been", substituted "the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application" for "such taxpayer may reapply in the following taxable year for a tax credit for those same eligible costs, and in such event, that taxpayer shall have priority over other taxpayers for credit allocation in the year of such reapplication", and added the last sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 1163,

§ 7, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2011, p. 297, § 5(c), not codified

by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

48-7-29.16. Qualified education tax credit.

(a) As used in this Code section, the term:

(1) “Qualified education expense” means the expenditure of funds by the taxpayer during the tax year for which a credit under this Code section is claimed and allowed to a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for tuition and fees for a qualified school or program.

(2) “Qualified school or program” shall have the same meaning as in paragraph (2) of Code Section 20-2A-1.

(3) “Student scholarship organization” shall have the same meaning as in paragraph (3) of Code Section 20-2A-1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or \$1,000.00 per tax year, whichever is less; or

(2) In the case of a married couple filing a joint return, the actual amount expended or \$2,500.00 per tax year, whichever is less.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation’s income tax liability, whichever is less.

(d) The tax credit shall not be allowed if the taxpayer designates the taxpayer’s qualified education expense for the direct benefit of any dependent of the taxpayer.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years’ tax liability. No such credit shall be allowed the taxpayer against prior years’ tax liability.

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed \$50 million per tax year; provided, however, that this maximum amount shall be adjusted annually until January 1, 2018, which adjustment may be based on the most recent

annual percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average All Items Index, published by the Bureau of Labor Statistics of the United States Department of Labor, as determined by the department.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, a student scholarship organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a student scholarship organization, the taxpayer shall notify the department of the total amount of contributions that the taxpayer intends to make to the student scholarship organization. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide written notice to the taxpayer and the student scholarship organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limit prescribed in paragraph (1) of this subsection. The department shall establish a web-based donation approval process to implement this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to student scholarship organizations if the commissioner preapproved a donation for a tax credit prior to the date the student scholarship organization is removed from the Department of Education list pursuant to Code Section 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(g) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such

confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(h)(1) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(2) The amount of any scholarship received by an eligible student or eligible pre-kindergarten student shall be excluded from taxable net income for Georgia income tax purposes.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section. (Code 1981, § 48-7-29.16, enacted by Ga. L. 2008, p. 1108, § 2/HB 1133; Ga. L. 2009, p. 816, § 6/HB 485; Ga. L. 2011, p. 529, § 2/HB 325.)

The 2011 amendment, effective July 1, 2011, inserted "or other entity" near the beginning of subsection (c); added the proviso in paragraph (f)(1); in paragraph (f)(3), added "and shall provide written notice to the taxpayer and the student scholarship organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer" at the end of the third sentence, substituted "within 60

days" for "within 30 days" in the fourth sentence, and added the sixth sentence; added the second sentence of paragraph (f)(4); and added paragraph (f)(5). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 529, § 3, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

48-7-30. Taxation of nonresident's entire net income derived from activities within state; separate accounting possible; applicability; allowed deductions; applicability of provisions for corporations to nonresidents.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-31. (For effective date, see note.) Taxation of corporations; allocation and apportionment of income; formula for apportionment.

(a) The tax imposed by this chapter shall apply to the entire net income, as defined in this article, received by every foreign or domestic corporation owning property within this state, doing business within this state, or deriving income from sources within this state to the extent permitted by the United States Constitution. A corporation shall be deemed to be doing business within this state if it engages within this state in any activities or transactions for the purpose of financial profit or gain whether or not:

- (1) The corporation qualifies to do business in this state;
- (2) The corporation maintains an office or place of doing business within this state; or
- (3) Any such activity or transaction is connected with interstate or foreign commerce.

(b)(1) If the entire business income of the corporation is derived from property owned or business done in this state, the tax shall be imposed on the entire business income.

(2) If the business income of the corporation is derived in part from property owned or business done in this state and in part from property owned or business done outside this state, the tax shall be imposed only on that portion of the business income which is reasonably attributable to the property owned and business done within this state, such portion to be determined as provided in subsections (c) and (d) of this Code section.

(c)(1) Interest received on bonds held for investment and income received from other intangible property held for investment are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from intangible property shall be allocated to this state if the situs of the corporation is in this state or if the intangible property was acquired as income from property held in this state or as a result of business done in this state.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of any business are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from tangible property located in this state shall be allocated to this state.

(3) Gains from the sale of tangible or intangible property not held, owned, or used in connection with the trade or business of the

corporation nor held for sale in the regular course of business shall be allocated to this state if the property sold is real or tangible personal property situated in this state or intangible property having an actual situs or a business situs within this state. Otherwise, the gains shall not be allocated to this state.

(d) Net income of the classes described in subsection (c) of this Code section having been separately allocated and deducted, the remainder of the net business income shall be apportioned as follows:

(1) Where the net business income of the corporation is derived principally from the manufacture, production, or sale of tangible personal property, the portion of net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For the purposes of this subparagraph, receipts shall be deemed to have been derived from business done within this state only if the receipts are received from products shipped to customers in this state, or from products delivered within this state to customers. In determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside this state and delivered from storage in this state to customers outside this state shall be excluded;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (2) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (2) of this subsection and shall be attributed to Georgia based upon division (2)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the net business income is derived principally from business other than the manufacture, production, or sale of tangible personal property, the net business income of the corporation shall be determined by applying the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For purposes of this subparagraph, the term "gross receipts" means all gross receipts received from activities which constitute the taxpayer's regular trade or business. Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (1) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (1) of this subsection and shall be attributed to Georgia based upon division (1)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(C) (For effective date, see note.) If the allocation and apportionment provisions provided for in this paragraph do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition the commissioner for, or the commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The denial of a petition under this subparagraph shall be appealable pursuant to Code Section 48-2-59. Such an appeal shall be filed within 30 days of the date of the commissioner's notice of denial;

(2.1)(A) Except as otherwise provided in this paragraph, all terms used in this paragraph shall have the same meaning as such terms are defined in 49 U.S.C. Section 1301 and the United States Department of Transportation's Uniform System of Accounts and Reports for Large Certificated Air Carriers, 14 C.F.R. Part 241, as now or hereafter amended.

(B) Where the net business income of the corporation is derived principally from transporting passengers or cargo in revenue flight, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following three-factor formula:

(i) Revenue air miles factor. The revenue air miles factor is a fraction, the numerator of which shall be equal to the total, for each flight stage which originates or terminates in this state, of revenue passenger miles by aircraft type flown in this state and revenue cargo ton miles by aircraft type flown in this state and the denominator of which shall be equal to the total, for all flight stages flown everywhere, of total revenue passenger miles by aircraft type and total revenue cargo ton miles by aircraft type;

(ii) Tons handled factor. The tons handled factor is a fraction, the numerator of which shall be equal to the total of revenue passenger tons by aircraft type handled in this state and revenue cargo tons by aircraft type handled in this state and the denominator of which shall be equal to the total of revenue passenger tons by aircraft type flown everywhere and revenue cargo tons by aircraft type flown everywhere. For purposes of this division, the term "handled" means the product of 60 percent multiplied by the revenue passenger tons flown on each flight stage which originates in this state or 60 percent multiplied by the revenue cargo tons flown on each flight stage which originates in this state;

(iii) Originating revenue factor. The originating revenue factor is a fraction, the numerator of which shall be equal to the total of passenger and cargo revenue by aircraft type which is attributable to this state and the denominator of which shall be the total of passenger and cargo revenue by aircraft type everywhere. For purposes of this division, passenger or cargo revenue which is attributable to this state shall be equal to the product of passenger or cargo revenue everywhere by aircraft type multiplied by the ratio of revenue passenger miles or revenue cargo ton miles in this state to total revenue passenger miles everywhere or total revenue cargo ton miles everywhere for each aircraft type as separately determined in division (i) of this subparagraph. If records of total passenger revenue everywhere by aircraft type or total cargo revenue everywhere by aircraft type are not maintained, then for purposes of this division, total passenger revenue everywhere for all aircraft types or total cargo revenue everywhere for all aircraft types shall be allocated to each aircraft type based on the ratio of total revenue passenger

miles everywhere for that aircraft type to all aircraft types or total revenue cargo ton miles everywhere for that aircraft type to all aircraft types;

(iv) The revenue air miles factor, the tons handled factor, and the originating revenue factor shall be separately determined and an apportionment fraction shall be calculated using the following formula:

(I) The revenue air miles factor shall represent 25 percent of the fraction;

(II) The tons handled factor shall represent 25 percent of the fraction; and

(III) The originating revenue factor shall represent 50 percent of the fraction.

The net income of the corporation shall be apportioned to this state according to such average fraction;

(2.2)(A) As used in this paragraph, the term:

(i) "Credit card data processing and related services" shall include, but not be limited to, the provision of infrastructure services for bank credit card and private label card issuers, such as new account application processing, international and domestic clearing, statement preparation, point-of-sale authorization processing, card embossing, and other related processing services for managing cardholder accounts.

(ii) "Customer" means the banks and institutions to whom credit card data processing and related services are provided.

(iii) "Gross receipts factor" means a fraction, the numerator of which is the total gross receipts from the taxpayer's customers during the tax period, if the principal office of the customer's credit card operation is in this state or if the principal office of the taxpayer's customer is in this state, and the denominator of which is the total gross receipts from all of the taxpayer's customers during the tax period.

(B) Where more than 60 percent of the total gross receipts of a corporation are derived from the provision of credit card data processing and related services to banks and other institutions, the portion of the net income attributable to business done in this state shall be determined by multiplying the corporation's net income by the gross receipts factor in division (iii) of subparagraph (A) of this paragraph;

(3) For the purposes of this subsection, the term "sale" shall include, but not be limited to, an exchange, and the term "manufac-

ture” shall include, but not be limited to, the extraction and recovery of natural resources and all processes of fabricating and curing.

(e) The net income of a domestic or foreign corporation which is a subsidiary of another corporation or which is closely affiliated with another corporation by stock ownership shall be determined by eliminating all payments to the parent corporation or affiliated corporation in excess of fair value and by including fair compensation to the domestic business corporation for its commodities sold to or services performed for the parent corporation or affiliated corporation. For the purposes of determining net income as provided in this subsection, the commissioner may equitably determine the net income by reasonable rules of apportionment of the combined income of the subsidiary, its parent, and affiliates, or any combination of the subsidiary, its parent, and any one or more of its affiliates. (Ga. L. 1931, Ex. Sess., p. 24, § 15; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3113; Ga. L. 1935, p. 121, § 4; Ga. L. 1937, p. 109, § 9; Ga. L. 1941, p. 210, § 5; Ga. L. 1950, p. 299, § 1; Ga. L. 1962, p. 455, § 1; Ga. L. 1969, p. 114, §§ 3, 4; Ga. L. 1974, p. 406, § 1; Code 1933, § 91A-3611, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 69; Ga. L. 1987, p. 191, § 2; Ga. L. 1995, p. 714, §§ 1, 2; Ga. L. 1996, p. 181, §§ 7, 8; Ga. L. 1996, p. 220, § 1; Ga. L. 1997, p. 459, §§ 1, 2; Ga. L. 1998, p. 6, § 1; Ga. L. 2001, p. 984, § 5; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 30, §§ 4-6/HB 191; Ga. L. 2005, p. 159, § 15/HB 488; Ga. L. 2012, p. 318, § 10/HB 100.)

Delayed effective date. — Subparagraph (d)(2)(C), as set out above, becomes effective January 1, 2013. For version of subparagraph (d)(2)(C) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective Janu-

ary 1, 2013, substituted “Code Section 48-2-59. Such an appeal shall be filed within 30 days of the date of the commissioner’s notice of denial” for “either Code Section 48-2-59 or 50-13-12” in the ending undesignated paragraph of subparagraph (d)(2)(C).

48-7-31.1. Conditions for allocating taxpayer’s income pursuant to agreement; public inspection; criteria for evaluating proposals.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-38. Deduction for payments to minority subcontractors; certification as minority business enterprise.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of

Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Gov-

ernment, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-40. Designation of counties as less developed areas; tax credits for certain business enterprises.

(a) As used in this Code section, the term:

(1) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. “Broadcasting” is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, biomedical manufacturing, and services for the elderly and persons with disabilities. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term “establishment” means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(3) “Competitive project” means expansion or location of some or all of a business enterprise’s operations in this state having significant regional impact where the commissioner of economic development certifies that but for some or all of the tax incentives provided in this Code section, the business enterprise would have located or expanded outside this state.

(4) “Existing business enterprise” means any business or the headquarters of any such business which has operated for the

immediately preceding three years a facility in this state which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, or research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(5) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(2) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred

forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this Code section any tier 3 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 2 county.

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county is reclassified in a different tier.

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to \$3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute

income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$750.00 annually for each new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years. Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those business enterprises that increase employment by two or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be

eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises shall be allowed an additional tax credit for taxes imposed under this article equal to \$500.00 per eligible new full-time employee job the first year in which the new full-time employee job is created. The additional credit shall be claimed in the first taxable year in which the new full-time employee job is created. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees.

Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit generated and utilized for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time employee jobs created by business enterprises qualified under subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through five, or whatever portion of years two through five which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in tiers 3 and 4 the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. In tier 1 and 2 counties, the credit allowed under this Code section against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year.

(i) Notwithstanding any provision of this Code section to the contrary, in counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax

credits shall be allowed as provided in this Code section, in addition to business enterprises or existing business enterprises, to any business of any nature.

(j) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original tax return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(k) The commissioner may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section.

(l) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim. (Code 1981, § 48-7-40, enacted by Ga. L. 1989, p. 905, § 1; Ga. L. 1992, p. 2031, § 1; Ga. L. 1994, p. 928, § 2; Ga. L. 1995, p. 585, § 1; Ga. L. 1996, p. 220, § 2; Ga. L. 1997, p. 461, § 1; Ga. L. 1998, p. 1224, § 2; Ga. L. 2000, p. 605, § 1; Ga. L. 2001, p. 984, § 7; Ga. L. 2005, p. 210, § 1/HB 389; Ga. L. 2008, p. 874, § 1/HB 1246; Ga. L. 2009, p. 654, § 1/HB 439; Ga. L. 2012, p. 1309, § 1/HB 868.)

The 2012 amendment, effective May 3, 2012, in paragraphs (a)(2) and (a)(4), inserted “including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises,” near the middle, inserted “biomedical manufacturing,” near the end, and added the third through fifth sentences; added paragraph (a)(5); in subsection (e), in paragraph (e)(1), inserted “employee” twice, substituted “two or more” for “five or more” in the ninth sentence, and deleted the former sixteenth and seventeenth sentences, which read: “In any year in which the net employment increase falls below the number required in such tier, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below the number required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that tax-

able year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture.”, and inserted “employee” preceding “jobs” in the third sentence of paragraph (e)(2); in subsection (f), substituted “five years” for “four years” in the first sentence, and inserted “employee” preceding “jobs” in the second sentence; substituted “Any credit” for “(1) Except as provided in paragraph (2) of this subsection, any” at the beginning of the first sentence of subsection (h); deleted former paragraph (h)(2), which read: “The additional credit claimed by an existing business enterprise pursuant to the provisions of paragraph (2) of subsection (e) of this Code section must be applied against taxes imposed for the taxable year in which such credit is available and may not be carried forward to any subsequent tax-

able year.”; and substituted “2012” for “2009” in subsection (l). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-7-40.1. Tax credits for business enterprises in less developed areas.

(a) As used in this Code section, the term:

(1) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. “Broadcasting” is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term “establishment” means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(b) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas the areas which are comprised of ten or more contiguous census tracts in this state using a combination of the following equally weighted factors:

(1) Highest unemployment rate for the most recent 36 month period;

(2) Lowest per capita income for the most recent 36 month period; and

(3) Highest percentage of residents whose income is below the poverty level according to the most recent data available.

(c) The commissioner of community affairs also shall be authorized to include in the designation provided for in subsection (b) of this Code section:

(1) Any area comprised of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area;

(2) Any area comprised of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater as reflected in the most recent decennial census;

(3) Any area comprised of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs, results or will result in a sudden and severe period of economic distress; or

(4) Any area which is within or adjacent to one or more contiguous census block groups with a poverty rate of 15 percent or greater as determined from data in the most current United States decennial census, where the area is also included within a state enterprise zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of community affairs, displays pervasive poverty, underdevelopment, general distress, and blight.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area. Notwithstanding any provision of this Code section to the contrary, in areas designated as suffering from pervasive poverty under this subsection, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any lawful business.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall pre-

scribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular area is removed from the list of less developed areas.

(e) Business enterprises in areas designated by the commissioner of community affairs as less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to \$3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by five or more in a less developed area shall be eligible for the credit; provided, however, that within areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c) of this Code section businesses shall only have to increase employment by two or more jobs in order to be eligible for the credit, provided that, if a business only increases employment by two jobs, the persons hired for such jobs shall not be married to one another. The average wage of the new jobs created must be above the average wage of the county that has the lowest wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other

employees. Credit shall not be allowed during a year if the net employment increase falls below five or two, as applicable. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of five or two.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time employee jobs created by business enterprises qualified under subsection (b) or (c) of this Code section. Additional new full-time employee jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through five, or whatever portion of years two through five which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in subsection (e) of this Code section, but the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(i) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original tax return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(j) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim. (Code 1981, § 48-7-40.1, enacted by Ga. L. 1993, p. 1649, § 2; Ga. L. 1994, p. 928, § 3; Ga. L. 1996, p. 220, §§ 3, 4; Ga. L. 1997, p. 461, § 2; Ga. L. 2000, p. 605, § 2; Ga. L. 2001,

p. 984, § 8; Ga. L. 2004, p. 939, § 1; Ga. L. 2008, p. 874, § 2/HB 1246; Ga. L. 2008, p. 1152, § 1/HB 1273; Ga. L. 2009, p. 654, § 2/HB 439; Ga. L. 2012, p. 1309, § 2/HB 868.)

The 2012 amendment, effective May 3, 2012, in paragraph (a)(2), inserted “including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises,” near the middle, inserted “biomedical manufacturing,” near the end, and added the third through fifth sentences; deleted the former ninth and tenth sentences of subsection (e), which read: “In any year in which the net employment increase falls below five or two, as applicable, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below five or two, as applicable, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this

article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however that Code Section 48-2-40 shall not apply to any such forfeiture”; in subsection (f), substituted “five years” for “four years” and inserted “employee” in the first and second sentences; and substituted “2012” for “2009” in subsection (j). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state taxes on revenues and income from communications satellite services, 51 ALR6th 257.

48-7-40.12. Tax credit for qualified research expenses.

(a) As used in this Code section, the term:

(1) “Base amount” means the product of a business enterprise’s Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit provided in this Code section. For purposes of this paragraph, “Georgia gross receipts” shall be the numerator of the gross receipts factor provided in subsection (d) of Code Section 48-7-31.

(2) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. “Broadcasting” is limited to establishments classified under the 2007 North American Industry Classification System Codes 515,

broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.

(4) "Qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(b) A tax credit is allowed a business enterprise which has qualified research expenses in Georgia in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended.

(c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the excess over the base amount referred to in said subsection.

(d) Any unused credit claimed under this Code section may be carried forward ten years from the close of the taxable year in which the qualified research expenses were made. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(e) Where the amount of a credit claimed under this Code section exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. (Code 1981, § 48-7-40.12, enacted by Ga. L. 1997, p. 461, § 9; Ga. L. 1998, p. 128, § 48; Ga. L. 2008, p. 874, § 3/HB 1246; Ga. L. 2009, p. 654, § 4/HB 439; Ga. L. 2012, p. 1309, § 3/HB 868.)

The 2012 amendment, effective May 3, 2012, in subsection (e), in the first sentence, substituted “Where the amount” for “In the first five years of a newly formed business enterprise’s operations in this state, where the amount”, and substituted “the business enterprise’s remaining Georgia net income tax liability after all other credits have been applied” for “a

taxpayer’s liability for such taxes”. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state taxes on revenues and income from communications satellite services, 51 ALR6th 257.

48-7-40.15. Alternative tax credits for base year port traffic increases; conditions and limitations.

(a) As used in this Code section, the term:

(1) “Base year port traffic” means:

(A) For taxable years beginning prior to January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that in the event the total amount actually transported during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s), then “base year port traffic” means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s).

(B) For all taxable years beginning on or after January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product actually imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the second preceding 12 month period; provided, however, that in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s), then “base year port traffic” means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s).

(2) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribu-

tion. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by subsection (b) of this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(4) "Port facility" means any privately owned or publicly owned facility located within this state through which product is transported by way of a waterborne ship or vehicle to or from destinations outside this state.

(5) "Port traffic" means:

(A) For taxable years beginning prior to January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product transported by way of a waterborne ship or vehicle through a port facility.

(B) For all taxable years beginning on or after January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(6) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(7) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construc-

tion of an additional manufacturing or telecommunications facility to be located in this state or in the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, moneys expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this Code section.

(b)(1) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed an additional \$1,250.00 job tax credit against the tax imposed under this article.

(2) The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that such credit shall not be allowed during a year if the port traffic does not remain above the minimum level established in this Code section.

(c) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added at any time on or after January 1, 1998, there shall be allowed a credit against the tax imposed under this article in an amount equal to the applicable percentage amount otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for the cost of such property. The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7, as applicable, except that such property may be placed in service in any county without regard to its tier designation. Such credit shall also be in lieu of and not in addition to the credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9.

(d) No business enterprise shall be authorized to claim the credits provided for in both subsections (b) and (c) of this Code section on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic, has increased employment by 400 or more no sooner than January 1, 1998,

and has purchased or acquired qualified investment property having an aggregate cost in excess of \$20 million no sooner than January 1, 1998.

(e) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's state income tax return which shall set forth the following information, as a minimum, in addition to the information required under Code Sections 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

(A) A description of how the base year port traffic and the increase in port traffic was determined;

(B) The amount of the base year port traffic;

(C) The amount of the increase in port traffic for the taxable year, including information which demonstrates an increase in port traffic in excess of the minimum amount required to claim the tax credit under this Code section;

(D) Any tax credit utilized by the taxpayer in prior years;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years.

(2)(A) Any tax credit claimed under subsection (b) of this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 or 48-7-40.1 and this Code section, respectively.

(B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that the increase in port traffic remains above the minimum level established in this Code section and the qualified investment property remains in service.

(3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that the increase in port traffic remains above the

minimum level established in this Code section and the qualified investment property remains in service.

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 or 48-7-40.1 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer. (Code 1981, § 48-7-40.15, enacted by Ga. L. 1998, p. 744, § 1; Ga. L. 1998, p. 1224, § 7; Ga. L. 2000, p. 605, § 5; Ga. L. 2001, p. 855, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 159, § 16/HB 488; Ga. L. 2008, p. 874, § 4/HB 1246; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 654, § 5/HB 439; Ga. L. 2012, p. 1309, § 4/HB 868.)

The 2012 amendment, effective May 3, 2012, substituted "519, Internet publishing and broadcasting" for "516, Internet publishing and broadcasting" in paragraph (a)(2); substituted the present provisions of paragraph (a)(3) for the former provisions, which read: "Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries but

shall not include retail businesses."; inserted "that" near the middle of paragraph (b)(2); inserted "or 48-7-40.1" in paragraphs (b)(1) and (b)(2), and subparagraphs (e)(2)(A) and (e)(3)(C); and inserted ", 48-7-40.1," in paragraph (e)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

48-7-40.17. Establishing or relocating headquarters; tax credit.

(a) As used in this Code section, the term:

(1) "Average wage" means the average wage of the county in which a new quality job is located as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(2) "New quality job" means employment for an individual which:

(A) Is located in this state;

(B) Has a regular work week of 30 hours or more;

(C) Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for; and

(D) Pays at or above 110 percent of the average wage of the county in which it is located.

(b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this state which elects not to receive the tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such jobs and investments created by, arising from, related to, or connected in any way with the same project and, within one year of the first date on which the taxpayer pursuant to the provisions of Code Section 48-7-101 withholds wages for employees in this state and employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for taxes imposed under this article:

(1) Equal to \$2,500.00 annually per eligible new quality job where the job pays 110 percent or more but less than 120 percent of the average wage of the county in which the new quality job is located;

(2) Equal to \$3,000.00 annually per eligible new quality job where the job pays 120 percent or more but less than 150 percent of the average wage of the county in which the new quality job is located;

(3) Equal to \$4,000.00 annually per eligible new quality job where the job pays 150 percent or more but less than 175 percent of the average wage of the county in which the new quality job is located;

(4) Equal to \$4,500.00 annually per eligible new quality job where the job pays 175 percent or more but less than 200 percent of the average wage of the county in which the new quality job is located; and

(5) Equal to \$5,000.00 annually per eligible new quality job where the job pays 200 percent or more of the average wage of the county in which the new quality job is located;

provided, however, that where the amount of such credit exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each new quality job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code

Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. For each new quality job created, the credit established by this subsection may be taken for the first taxable year in which the new quality job is created and for the four immediately succeeding taxable years; provided, however, that such new quality jobs must be created within seven years from the close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit shall not be allowed during a year if the net employment increase falls below the 50 new quality jobs required. Any credit received for years prior to the year in which the net employment increase falls below the 50 new quality jobs required shall not be affected except as provided in subsection (f) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the 50 new quality jobs required.

(c) The number of new quality jobs to which this Code section shall be applicable shall be determined by comparing the monthly average of new quality jobs subject to Georgia income tax withholding for the taxable year with the corresponding average for the prior taxable year.

(d) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the new quality jobs were established.

(e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(f) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim.

(g) The state revenue commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.17, enacted by Ga. L. 2000, p. 605, § 6; Ga. L. 2001, p. 984, § 9; Ga. L. 2003, p. 665, § 7; Ga. L. 2009, p. 654, § 6/HB 439; Ga. L. 2012, p. 1309, § 5/HB 868.)

The 2012 amendment, effective May 3, 2012, added “and” at the end of subparagraph (a)(2)(C); substituted a period for “; and” at the end of subparagraph (a)(2)(D); deleted former subparagraph (a)(2)(E), which read: “Has no predetermined end date”; inserted “state revenue” in the proviso in the last sentence of paragraph (b)(5) and in subsection (g); deleted former subsection (f), which read: “If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer shall forfeit the right to the credit claimed for such job in that year. For each year such new quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code

Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture.”; redesignated former subsection (g) as present subsection (f); substituted “2012” for “2009” in subsection (f); redesignated former subsection (h) as present subsection (g); and inserted “state revenue” in subsection (g). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

48-7-40.24. Conditions for taking job tax credit by business enterprises; calculating credit.

(a) As used in this Code section, the term:

(.1) “Affiliate” means the members of a business enterprise’s affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code and also means any entity, notwithstanding its form of organization, that would otherwise qualify as a member of such affiliated group.

(1) “Business enterprise” or “taxpayer” means any enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization, and its affiliates, which are registered and authorized to use the federal employment verification system known as “E-Verify” or any successor federal employment verification system and are engaged in or carrying on any business activities within this state, except that such term shall not include retail businesses.

(2) “Eligible full-time employee” means an individual holding a full-time employee job created by a qualified project who:

(A) Possesses a valid Georgia driver’s license or identification card issued by the Department of Driver Services; or

(B) Submits a notarized affidavit swearing to be a United States citizen or lawfully present alien authorized to work in the United States.

(3) “Force majeure” means any:

(A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(4)(A) “Full-time employee job” and “full-time job” mean employment of an individual which:

(i) Is located in this state at the site or sites of a qualified project or the facility or facilities resulting therefrom;

(ii) Involves a regular work week of 35 hours or more;

(iii) Has no predetermined end date; and

(iv) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For purposes of this paragraph:

(i) Leased employees shall be considered employees of the company using their services and such persons may be counted in determining the company’s job tax credits under this Code section if their employment otherwise satisfies subparagraph (A) of this paragraph;

(ii) An individual’s employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as

amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year; and

(iii) When there is a merger or acquisition of another company by a business enterprise whose application for a qualified project has been approved, the existing jobs in this state shall not be counted in calculating the job creation requirement and the credit calculation necessary to qualify for the tax credit under this Code section. Only additional jobs added in this state that meet the requirements of this Code section shall be counted for purposes of calculating the job creation requirement and the credit calculation.

(5) "Job creation requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of 1,800 eligible full-time employees. If at the close of the sixth taxable year following the withholding start date a minimum of \$600 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional two-year period. If at the close of the eighth taxable year following the withholding start date a minimum of \$800 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional four-year period after the sixth taxable year following the withholding start date.

(6) "Job maintenance requirement" means the requirement that, with respect to each year in the recapture period, the monthly average number of eligible full-time employees employed by the business enterprise, determined as prescribed by subsection (1) of this Code section, must equal or exceed 1,800.

(7) "Payroll maintenance requirement" means the requirement that, with respect to each year in the recapture period, the total annual Georgia W-2 reported payroll with respect to a qualified project must equal or exceed \$150 million.

(8) "Payroll requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of \$150 million in total annual Georgia W-2 reported payroll with respect to a qualified project.

(9) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and any personal property to be used in the facility or facilities.

(10) "Qualified investment property requirement" means the requirement that by the close of the sixth taxable year following the withholding start date, a minimum of \$450 million in qualified investment property will have been purchased or acquired by the business enterprise to be used with respect to a qualified project.

(11) "Qualified project" means a project which meets the job creation requirement and either the payroll requirement or qualified investment property requirement. If the taxpayer selects the qualified investment property requirement as one of the conditions for its project, the property shall involve the construction of one or more new facilities in this state or the expansion of one or more existing facilities in this state. For purposes of this paragraph, the term "facilities" means all facilities comprising a single project, including noncontiguous parcels of land, improvements to such land, buildings, building improvements, and any personal property that is used in the facility or facilities.

(12) "Recapture period" means the period of five consecutive taxable years that commences after the first taxable year in which a business enterprise has satisfied the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer.

(13) "Withholding start date" means the date on which the business enterprise begins to withhold Georgia income tax from the wages of its employees located at the site or sites of a qualified project.

(b) A business enterprise that is planning a qualified project shall be allowed to take the job tax credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence and the expected withholding start date;

(B) Certifies that such project will meet the job creation requirement and either the payroll requirement or the qualified investment property requirement prescribed by this Code section; and

(C) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance

requirement and, if applicable, the payroll maintenance requirement prescribed by this Code section;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, the panel, after reviewing the application, certifies that the new or expanded facility or facilities will have a significant beneficial economic effect on the region for which they are planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum job creation requirement and either the payroll requirement or qualified investment property requirement, as applicable, specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The project will create new full-time employee jobs with average wages that are, as determined by the Department of Labor, for all jobs for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new or expanded facility or facilities which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a tax credit for taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time employee job for five years beginning with the year in which such job is created through year five

after such creation; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. For any one taxable year the amounts taken as a credit against taxes imposed under this article and against the business enterprise's quarterly or monthly payments under Code Section 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees.

(e) The number of new full-time jobs to which this Code section shall be applicable shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period for the prior taxable year.

(f) Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise.

(g) To qualify for the credit provided by this Code section, a new full-time job must be created by the close of the seventh taxable year following the business enterprise's withholding start date, unless the

purchase or acquisition of qualified investment property is made as provided in paragraph (5) of subsection (a) of this Code section, in which case a new full-time job must be created by the close of the eighth taxable year following the business enterprise's withholding start date based on a \$600 million qualified investment or the end of the tenth taxable year based on an \$800 million qualified investment. In no event may a credit be claimed under this Code section for more than 4,500 new full-time employee jobs created by any one project; provided, however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions thereof.

(h) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for ten years from the close of the taxable year in which the qualified job was established.

(i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to and takes credits provided by this Code section for a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 for jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Provided such taxpayer otherwise qualifies, such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the costs of retraining an employee located at the site or sites of such project or the facility or facilities resulting therefrom, but only for costs incurred more than five years after the date the facility or facilities first become operational.

(j) Except under those circumstances described in subsection (k) of this Code section, the taxpayer shall, not more than 60 days after the close of the sixth taxable year following its withholding start date, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to determine whether the taxpayer has met the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer, for such project. If the taxpayer has failed to meet any applicable job creation, payroll, or qualified investment property requirement, the taxpayer shall forfeit the right to claim any credits provided by this Code section for such project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes imposed by this

article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification from the commissioner that any applicable job creation, payroll, or qualified investment property requirement was not met, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by Code Section 48-2-40. On such amended returns the taxpayer may claim any credit to which it would have been entitled under this article but for having taken the credit provided by this Code section.

(k) If the recapture period applicable to a qualified project begins with or before the sixth taxable year following the taxpayer's withholding start date, or with or before the eighth taxable year following the taxpayer's withholding start date if the project falls within the \$600 million in qualified investment property category, or within the tenth taxable year following the taxpayer's withholding start date if the project falls within the \$800 million in qualified investment property category, the taxpayer shall, not later than 60 days after the close of the taxable year immediately preceding the recapture period, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to verify that the taxpayer met the job creation requirement and either the payroll requirement or the qualified investment property requirement in such preceding year.

(l) Not more than 60 days after the close of each taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement and, if applicable, the payroll maintenance requirement for such year. For purposes of this subsection, whether such job maintenance requirement has been satisfied shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with 1,800. For purposes of this subsection, whether such payroll maintenance requirement has been satisfied shall be determined by comparing the total annual Georgia W-2 reported payroll with respect to a qualified project for the taxable year with \$150 million. If the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall forfeit the right to 20 percent of all credits provided by this Code section for such project. A taxpayer

that forfeits such right is liable for 20 percent of all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by Code Section 48-2-40.

(m) A taxpayer that fails to meet the job maintenance requirement or payroll maintenance requirement, or both, for any taxable year within the recapture period because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (l) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, but that the portion of the year so affected was six months or less, for purposes of the job maintenance requirement the commissioner shall calculate the taxpayer's monthly average number of eligible full-time employees for purposes of subsection (l) of this Code section by disregarding the affected months and for purposes of the payroll maintenance requirement the commissioner shall annualize the total Georgia W-2 reported payroll with respect to a qualified project for the portion of the year not so affected. If the commissioner determines that the affected portion of the year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement or payroll maintenance requirement, or both, and the recapture period applicable to the qualified project shall be extended for an additional year.

(n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsection (j) or (l) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsection (j) or (l) of this Code Section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(o) Projects certified by the panel pursuant to paragraph (2) of subsection (b) of this Code section before January 1, 2009, shall be

governed by this Code section as it was in effect for the taxable year the project was certified.

(p) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.24, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 20; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2009, p. 806, § 1/HB 438; Ga. L. 2012, p. 976, § 1/HB 1027; Ga. L. 2012, p. 1309, § 6/HB 868.)

The 2012 amendments. — The first 2012 amendment, effective May 2, 2012, added paragraph (a)(1); and, in paragraph (a)(1), twice substituted “are” for “is”, inserted “or ‘taxpayer’” near the beginning, and inserted “, and its affiliates,” near the middle. See editor’s note for applicability. The second 2012 amendment, effective May 3, 2012, in subsection (a), deleted “Georgia” preceding “Department of Driver Services” in subparagraph (a)(2)(A); redesignated paragraph (a)(4) as subparagraph (a)(4)(A), and, in subparagraph (a)(4)(A), substituted “mean” for “means”; redesignated former subparagraphs (a)(4)(A) through (a)(4)(D) as divisions (a)(4)(A)(i) through (a)(4)(A)(iv), respectively; designated the previously undesignated provisions as subparagraph (a)(4)(B); in subparagraph (a)(4)(B), substituted “paragraph:” for “paragraph,”; in division (a)(4)(B)(i), substituted “Leased employees shall” for “leased employees will”, and substituted “satisfies subparagraph (A) of this paragraph” for “meets the definition of full-time job contained herein.”; in division (a)(4)(B)(ii), substituted “An individual’s” for “In addition, an individual’s”, substituted “; and” for a period at the end; added division (a)(4)(B)(iii); and added the second and third sentences of paragraph (a)(5); in subsection (b), substituted “the panel” for

“said panel” in the first sentence of paragraph (b)(2); substituted “Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the” for “The” in subsection (f); added the language beginning “, unless the purchase” and ending “qualified investment” in subsection (g); in subsection (j), substituted “taxpayer shall” for “taxpayer will” in the second sentence and substituted “by Code Section 48-2-40” for “herein” at the end of the next-to-last sentence of subsection (j); added the language beginning “, or with or before” and ending “property category,” in subsection (k); in subsection (l), substituted “taxpayer shall” for “taxpayer will” in the fourth sentence and substituted “by Code Section 48-2-40” for “herein” at the end of the last sentence; and substituted “taxpayer that” for “taxpayer who” in the first sentence of in subsection (m). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 976, § 3(b)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2012.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

48-7-40.26. Tax credit for film, video, or digital production in state.

(a) This Code section shall be known and may be cited as the “Georgia Entertainment Industry Investment Act.”

(b) As used in this Code section, the term:

(1) “Affiliates” means those entities that are included in the production company’s or qualified interactive entertainment produc-

tion company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Base investment" means the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) "Multimarket commercial distribution" means paid commercial distribution which extends to markets outside the State of Georgia.

(4) "Production company" means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(5) "Production expenditures" means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out

companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

(6) "Qualified Georgia promotion" means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

(B) Qualified TV production which includes an embedded five-second long Georgia promotion during each broadcast worldwide for the life of the project and which includes a link to Georgia on the project's web page;

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(7) "Qualified interactive entertainment production company" means a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(8) "Qualified production activities" means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia.

(9) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

(10) "State certified production" means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a "work for hire" in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(11) "Total aggregate payroll" means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds \$500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest

shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds \$500,000.00 for qualified production activities and shall be calculated as follows:

(1) The production company or qualified interactive entertainment production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

(2)(A) The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer alternative marketing opportunities to be evaluated by the Georgia Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the

House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(d) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds \$500,000.00, the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates exceed \$25 million. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be \$5 million.

(2) The commissioner shall allow the tax credits for qualified interactive entertainment production companies on a first come, first served basis based on the date the credits are claimed. When the \$25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire.

(f)(1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company or qualified interactive entertainment production company.

(2) If a production company and its affiliates, or a qualified interactive entertainment production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized

under this Code section and taken by the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not

have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(h) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) The credit may be taken beginning with the taxable year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(C) The amount of tax credit claimed for the taxable year;

(D) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Georgia income tax liabilities or the production company's or qualified interactive entertainment production company's quarterly or monthly payments under Code Section 48-7-103;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years;

(2) In the initial year in which the production company or qualified interactive entertainment production company claims the credit

granted in this Code section, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed \$500,000.00 during such year; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(j) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(k) Any production company or qualified interactive entertainment production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section. (Code 1981, § 48-7-40.26, enacted by Ga. L. 2005, p. 1125, § 2/HB 539; Ga. L. 2006, p. 242, § 2/HB 194; Ga. L. 2008, p. 317, § 1/HB 1100; Ga. L. 2012, p. 976, § 2/HB 1027.)

The 2012 amendment, effective May 2, 2012, rewrote subsection (b); redesignated former paragraph (c)(2) as present subparagraph (c)(2)(A); added the second sentence in subparagraph (c)(2)(A); added subparagraph (c)(2)(B); redesignated former paragraph (d)(2) as present subparagraph (d)(2)(A); added the second sentence in subparagraph (d)(2)(A); added subparagraph (d)(2)(B); added subsection (e); redesignated former subsection (e) as present subsection (f); in paragraph (f)(2), inserted "and its affiliates" and inserted "qualified interactive entertainment"

throughout; redesignated former subsection (f) as present subsection (g); substituted "subsection (f)" for "subsection (e)" in paragraph (g)(5); and redesignated former subsections (g) through (j) as present subsection (h) through (k), respectively. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 976, § 3(c)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2013.

48-7-40.29. (For effective date, see note.) Income tax credits for certain qualified equipment that reduces business or domestic energy or water usage.

(a) As used in this Code section, the term:

(1) “Cost” means the aggregate funds actually invested and expended by a taxpayer to put into service the qualified equipment.

(2) “Energy efficient equipment” means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources, as effective in reducing business or domestic energy usage. Such certifications may include, by way of example and not limitation, any dishwasher, clothes washer, furnace, air conditioner, central heating and air conditioning system, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, energy efficient water heater, skylighting system, whole house fan, energy use meter, light-emitting diode lighting system, geothermal heating system, door, window, or window film which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency’s energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency’s Energy Star program.

(3) “Qualified equipment” means energy efficient equipment or water efficient equipment.

(4) “Water efficient equipment” means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources as effective in reducing business or domestic water usage. Such certifications shall include, by way of example and not limitation, water conservation systems capable of storing rain water or gray water for future use and reusing the collected water for the same residential or commercial property and other products used for the conservation or efficient use of water which have been designated by the United States Environmental Protection Agency as meeting or exceeding such agency’s water saving efficiency requirements or which have been designated as meeting or exceeding such requirements under such agency’s Water Sense program.

(b) Rules and regulations of the commissioner of natural resources shall establish classifications or categories of qualified equipment, and no item of such qualified equipment shall be included in more than one classification or category for purposes of claiming a tax credit under this Code section. The commissioner of natural resources, may take all

reasonable and necessary steps to identify qualified equipment and to bring such equipment to the attention of taxpayers in this state qualified to install such equipment.

(c) After the effective date of this Code section, any taxpayer who is the ultimate purchaser of an item of qualified equipment for installation as part of new construction or for retrofit in this state shall be allowed a credit against the tax imposed under this article in the taxable year in which such qualified equipment was placed in service. The amount of the credit allowed under this Code section shall be 25 percent of the cost of the qualified equipment or \$2,500.00, whichever is less.

(d) The credit granted under subsection (c) of this Code section shall be subject to the following conditions and limitations:

(1) The aggregate amount of credit which shall be claimed and allowed by taxpayers in any taxable year under this Code section shall be limited solely and exclusively to the amount of federal funds granted to the state for purposes of this Code section. In any tax year in which no federal funds are available for such purposes, no credit shall be claimed and allowed under this Code section.

(2) A taxpayer that claims a credit allowed under this Code section shall not be eligible to claim such qualified equipment for the clean energy property credit provided in Code Section 48-7-29.14; and

(3) To claim a credit allowed by this Code section, the taxpayer shall provide any information required by the Department of Natural Resources or the department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the Department of Natural Resources or the department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) In no event shall the amount of the tax credit allowed by this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified equipment was placed in service. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) After the qualified equipment is placed in service, a taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and

forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(g) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section exceed the amount of federal funds granted to the state for purposes of this Code section.

(h) The Department of Natural Resources and the department shall be authorized to adopt rules and regulations to provide for the administration of the tax credit provided by this Code section. Specifically, the Department of Natural Resources and the department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis. (Code 1981, § 48-7-40.29, enacted by Ga. L. 2010, p. 1163, § 1/HB 1069.)

Delayed effective date. — Ga. L. 2010, p. 1163, § 7 provides that this Code section becomes effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by this Code section and in which the state

auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of this Code section. Funds were not available as of June 2012.

48-7-40.30. Income tax credit for certain qualified investments for limited period of time.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of the state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

(b) As used in this Code section, the term:

(1) "Allowable credit" means the credit as it may be reduced pursuant to subparagraph (3) of subsection (i) of this Code section.

(2) "Headquarters" means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) "Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

(4) "Pass-through entity" means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) "Professional services" means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) "Qualified business" means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than \$1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, research and development, or a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

(i) Retail sales;

- (ii) Real estate or construction;
- (iii) Professional services;
- (iv) Gambling;
- (v) Natural resource extraction;
- (vi) Financial, brokerage, or investment activities or insurance; or
- (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement or similar organizational documents to engage as one of its primary purposes such activity.

(7) "Qualified investment" means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) "Qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than \$5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) "Qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred

stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) “Registered” or “registration” means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor is not eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this Code section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed \$50,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit;

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce; and

(6) To be eligible for the credit provided in this Code section, the qualified investor must file an application for the credit with the commissioner on or before June 30 of the year following the calendar year in which the qualified investment was made.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business whether as an officer, a member of the board of directors or managers or otherwise or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the

qualified investor may claim either the credit authorized under this Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed \$10 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed \$10 million in such year; and

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed \$10 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.30, enacted by Ga. L. 2010, p. 1163, § 2/HB 1069.)

Effective date. — This Code section became effective January 1, 2011.

ARTICLE 3

RETURNS AND FURNISHING OF INFORMATION

48-7-53. Partnership returns; contents; oath; “partnership” and “partner” defined.

Law reviews. — For article, “Aggregate-Plus Theory of Partnership Taxation,” see 43 Ga. L. Rev. 717 (2009).

48-7-54. Electronic filing for nonindividual taxpayers.

The commissioner may require any nonindividual taxpayer and any return preparer who prepares any return, report, or other document required to be filed by this chapter to electronically file any return, report, or other document required to be filed by this chapter when the federal counterpart of such return, report, or other document is required to be filed electronically pursuant to the Internal Revenue Code of 1986 or Internal Revenue Service regulations. The commissioner shall be authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section. (Code 1981, § 48-7-54, as enacted by Ga. L. 2008, p. 898, § 9/HB 1151; Ga. L. 2010, p. 895, § 3/HB 1138.)

The 2010 amendment, effective June 3, 2010, inserted “and any return preparer who prepares any return, report, or other document required to be filed by this chapter” near the beginning of the first sentence.

48-7-60. Confidentiality of tax information; exceptions; authorized inspection by certain officials; conditions; furnishing information to local tax authorities; conditions; furnishing information to nonofficials; conditions; effect of Code section.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the commissioner, other officer, employee, or agent, or any former officer, employee, or agent to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under the law of this state or any return or return information required by the Internal Revenue Code when the information or return is received from the

Internal Revenue Service or submitted by the taxpayer as provided by the laws of this state. Nothing contained in this Code section shall be construed to prohibit the print or electronic publication of statistics so presented as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the state, or use as evidence, of the report or return of a taxpayer in the event of any action or proceeding involving any tax liability of the taxpayer. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(b) The commissioner may permit the commissioner of internal revenue of the United States, the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representative of either such officer to inspect the income tax returns of any taxpayer, or may furnish to the officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer. The permission shall be granted or the information shall be furnished to the officer or his representative only if:

(1) The request is only for state tax information including federal tax information required by the state to be filed by the taxpayer with his state return;

(2) The requested information will be used solely for tax purposes;

(3) The requesting state has a confidentiality statute which complies with the requirements of Section 6103(p)(8) of the Internal Revenue Code; and

(4) The statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(c) The commissioner may permit the disclosure of inventories, depreciable assets, accumulated depreciation, and book value of depreciable assets to local tax authorities in this state to be used solely for ad valorem tax purposes, provided that the furnishing of the information is not prohibited by Section 6103 of the Internal Revenue Code; and provided, further, that the furnishing of the information to the local tax authorities shall not be deemed to change the confidential character of the information, and any persons receiving the information pursuant to this subsection shall be subject to Code Section 48-7-61, relating to the sanctions to be imposed for the unauthorized disclosure of confidential material.

(d) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having

access to tax information where necessary to conduct research commissioned by the department or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration. Any such access shall be pursuant to a written agreement with the department providing for the handling, permitted uses, and destruction of such tax information, requiring security clearance checks for such persons or groups of persons similar to those required of employees of the department, and including such other terms and conditions as the department may require to protect the confidentiality of the tax information to be disclosed. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.

(e) Notwithstanding any other law, this Code section shall remain in full force and effect unless specific reference is made in such other law to this Code section and to the disclosure of income tax information contained in any report or return required under this Code section. (Code 1933, § 91A-3711, enacted by Ga. L. 1979, p. 5, § 72; Ga. L. 1982, p. 3, § 48; Ga. L. 1987, p. 191, § 9; Ga. L. 2002, p. 372, § 7; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 297, § 4/HB 346.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” in the second sentence of subsection (a).

The 2011 amendment, effective May 11, 2011, in subsection (d), in the first sentence, substituted “or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other

services for purposes of tax administration” for “and where necessary for data processing operations and maintenance of data processing equipment, provided the persons or groups of persons have obtained prior written approval from the commissioner and are subject to the direct security control of department personnel during all periods of access” and added the second sentence.

ARTICLE 5

CURRENT INCOME TAX PAYMENT

48-7-112. Employee refunds and credits; procedures.

(a) **Credit.** The amount of tax deducted or withheld during any calendar year with respect to an employee shall be allowed as a credit to the employee against his income tax liability under Code Section 48-7-20 for the taxable year beginning in the calendar year.

(b) **Overpayment.**

(1) To the extent that the credit provided in subsection (a) of this Code section together with other credits allowed by law is in excess of the employee's income tax liability for the taxable year as shown on an income tax return filed by the employee for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this Code section. An overpayment shall be credited to the person's estimated income tax liability for the succeeding taxable year unless the person claims a refund for the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment. Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or from the due date of the final return, whichever is later.

(2) A refund shall be deemed to have been made when the commissioner issues a check for the refund payable to the claimant. The record in the office of the commissioner as to the time of issuance of the refund shall be prima-facie evidence of the time the refund is made. Whenever a check is issued for a refund claimed or shown due on a final return and no separate claim has been filed for the refund, the check shall be sent by first-class mail to the claimant at the address shown on the return in an envelope instructing return of the envelope if not delivered in ten days. The commissioner shall publish in print or electronically the names of claimants whose checks are returned. If a refund check is not claimed in accordance with the commissioner's instructions within 90 days after the publication, the refund claim covered by the check shall be deemed to have been abandoned. Any refund check which is not presented for payment within 180 days after the date of the check shall be void and the refund claim covered by the check shall be deemed to have been abandoned. When any claim for refund has been abandoned, any funds which may have been designated or set aside for its payment shall be returned to the Office of the State Treasurer and the claimant's right to the refund shall be barred. This subsection shall not apply to a claim for refund filed with, but separately from, a final return under general law and shall not affect the period of limitations allowed by general law applicable to a claim for refund when filed separately from a final return.

(c) **Limitation on refund or credit.** No refund or credit shall be allowed unless the employee attaches to and files with his final income tax return a copy of the employer's receipt as provided for in Code Section 48-7-105 for the amount of tax deducted and withheld from his

wages for that taxable year. If an employee submits satisfactory proof that his employer deducted and withheld taxes from his wages and that the employer failed or refused to furnish the employee with the prescribed receipt, the proof so furnished may be taken to establish a credit or refund under this Code section.

(d) **Setoffs.** Notwithstanding any other provision of this subsection, a refund or a portion thereof may be transferred to a claimant agency to set off a debt due and owing to the claimant agency as provided in Article 7 of this chapter. When any action pursuant to Article 7 of this chapter is taken, that article shall govern all aspects of right and entitlement to refunds covered thereunder. Funds transferred to claimant agencies shall not bear interest. If there is a final determination that the taxpayer alleged to be a debtor is entitled to receive all or part of the funds transferred to a claimant agency, the amount to which the taxpayer is entitled shall bear interest at the rate provided in Code Section 48-2-35 beginning 30 days after the final determination. (Ga. L. 1960, p. 7, § 15; Ga. L. 1961, p. 53, § 1; Ga. L. 1975, p. 156, § 2; Code 1933, § 91A-3913, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1555, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 777, § 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendments. — The first 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the fourth sentence of paragraph (b)(2). The second 2010 amendment, effective July 1,

2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the next to the last sentence of paragraph (b)(2).

48-7-114. Estimated income tax by individuals; procedures.

(a) **“Estimated tax” defined.** For purposes of this Code section, the term “estimated tax” means the amount which the individual estimates as the amount of income tax imposed by Code Section 48-7-20 less the amount which the individual estimates as the sum of credits allowable by law against the tax.

(b) **Requirement of estimated tax.** Except as otherwise provided in subsection (d) of this Code section, every resident individual and every taxable nonresident individual shall file his or her estimated tax for the current taxable year if he or she can be reasonably expected to be required to file a Georgia income tax return for the current taxable year and his or her gross income can reasonably be expected to:

(1) Include more than \$1,000.00 from sources other than wages as defined in paragraph (10) of Code Section 48-7-100; and

(2) Exceed:

(A) One thousand five hundred dollars if the individual is single or the individual is married and not living with his or her spouse or

the individual is married and expects to claim only \$1,500.00 of the marital exemption; or

(B) Three thousand dollars if the individual is married and living with his or her spouse and expects to claim the full marital exemption.

(c) **Return as estimated tax.** If on or before January 31 of the succeeding taxable year or, in the case of an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, on or before March 1 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the estimated tax is required and pays in full the amount computed on the return as payable and the estimate is not required to be filed during the taxable year but is required to be filed on or before January 15, then the return shall be considered as the estimate.

(d) **Exemptions.** This Code section shall not apply to an individual in a given tax year if:

(1) The sum of the allowable credits shown on the individual's income tax return for the tax year exceeds the individual's tax liability shown on the return before the tax liability is reduced by the amount of the allowable credits; and

(2) The individual reasonably expected at the time estimated tax was otherwise required to be filed with respect to the tax year that the conditions of paragraph (1) of this subsection would be met for the tax year.

(e)(1) **Applicability to fiduciaries.** With respect to taxable years beginning on or after January 1, 1988, fiduciaries shall be subject to all requirements of this article in the same manner as individuals, except as provided in paragraph (2) of this subsection.

(2) This Code section shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death in the case of:

(A) The estate of such decedent; or

(B) A testamentary trust as defined in IRC Section 6654(1)(2)(B). (Ga. L. 1960, p. 7, § 18; Code 1933, § 91A-3915, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 76; Ga. L. 1980, p. 459, §§ 1, 2; Ga. L. 1987, p. 191, § 7; Ga. L. 1988, p. 1380, § 4; Ga. L. 1988, p. 1389, § 1; Ga. L. 2012, p. 796, § 1/HB 965.)

The 2012 amendment, effective May 1, 2012, in subsection (b), inserted "or her" introductory paragraph; redesignated former subsection (e) as present paragraph throughout, and inserted "or she" in the (e)(1); added ", except as provided in para-

graph (2) of this subsection” at the end of paragraph (e)(1); and added paragraph (e)(2).

48-7-128. Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents.

(a) As used in this Code section, the term “nonresident of Georgia” shall include individuals, trusts, partnerships, corporations, and unincorporated organizations. Any seller or transferor who meets all of the following conditions and who provides the buyer or transferee with an affidavit signed under oath swearing or affirming that the following conditions are met will be deemed a resident for purposes of this Code section:

(1) The seller or transferor has filed Georgia income tax returns or appropriate extensions have been received for the two income tax years immediately preceding the year of sale;

(2) The seller or transferor is in business in Georgia and will continue substantially the same business in Georgia after the sale or the seller or transferor has real property remaining in the state at the time of closing of equal or greater value than the withholding tax liability as measured by the 100 percent property tax assessment of such remaining property;

(3) The seller or transferor will report the sale on a Georgia income tax return for the current year and file it by its due date; and

(4) If the seller or transferor is a corporation or limited partnership, it is registered to do business in Georgia.

(b)(1) Except as otherwise provided in this Code section, in the case of any sale or transfer of real property and related tangible personal property located in Georgia by a nonresident of Georgia, the buyer or transferee shall be required to withhold and remit to the commissioner on forms provided by the commissioner a withholding tax equal to 3 percent of the purchase price or consideration paid for the sale or transfer; provided, however, that if the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor. Any buyer or transferee who fails to withhold such amount shall be personally liable for the amount of such tax.

(2) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner’s

delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(3) The person or entity identified as the seller on the settlement statement shall be considered the seller for all purposes regarding this Code section, including, but not limited to, executing and delivering to the buyer or transferee all forms or other documents incident to determining the appropriate amount of tax to be withheld or the appropriate amount exempt from withholding requirements.

(c) If the seller or transferor determines that the amount required to be withheld pursuant to paragraph (1) of subsection (b) of this Code section will result in excess withholding on any gain required to be recognized from the sale, the seller or transferor may provide the buyer or transferee with an affidavit signed under oath swearing or affirming to the amount of the gain required to be recognized from the sale, and the buyer or transferee shall withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section. If, however, the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor.

(d) Subsection (b) of this Code section shall not apply where:

(1) The real property being sold or transferred is a principal residence of the seller or transferor within the meaning of Section 1034 of the Internal Revenue Code;

(2) The seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of Georgia, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or a private mortgage insurance company.

The commissioner may by regulation set a purchase price amount below which no withholding is required.

(e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter "S" corporation or other unincorporated organization which certifies to the buyer or transferee that a composite return is being filed on behalf of the nonresident partners, shareholders, or members and that the partnership, Subchapter "S" corporation, or unincorporated organization remits the tax on the gain on behalf of the nonresident partners, shareholders, or mem-

bers, the buyer or transferee shall not be required to withhold as provided in this Code section. Any nonresident partner, shareholder, or member who falsely certifies that a composite return is being filed on behalf of such partner, shareholder, or member shall be liable for a penalty in the amount of \$500.00 or 10 percent of the amount required to be withheld, whichever is greater.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(f) Every buyer or transferee of real property located in Georgia who is required to deduct and withhold the withholding tax imposed by subsection (b) of this Code section shall file the required return and remit payment to the department on or before the last day of the calendar month following the calendar month within which the sale or transfer giving rise to the withholding tax occurred. (Code 1981, § 48-7-128, enacted by Ga. L. 1993, p. 768, § 2; Ga. L. 2011, p. 674, § 2-1/HB 117.)

The 2011 amendment, effective May 13, 2011, added paragraph (b)(3).

48-7-129. Withholding tax on distributions to nonresident members of partnerships, Subchapter "S" corporations, and limited liability companies.

(a)(1) Any partnership, Subchapter "S" corporation, or limited liability company which owns property or does business within this state shall be subject to a withholding tax. Such tax shall be withheld from a nonresident member's share of taxable income sourced to this state, whether distributed or not, except as provided in subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term "taxable income sourced to this state" means the entity's income allocated or apportioned to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

(2) The amount of tax to be withheld for each nonresident member shall be determined by multiplying the nonresident member's share of the taxable income sourced to this state by a rate of 4 percent. To the extent that the partnership, Subchapter "S" corporation, or limited liability company remits withholding tax during the course of the tax year which exceeds the Georgia income tax liability of a nonresident member, that member shall be entitled to a refund of the excess withholding at the end of the taxable year.

(3) Any partnership, Subchapter "S" corporation, or limited liability company which fails to withhold and pay over to the commissioner

any amount required to be withheld under this Code section may be liable for a penalty equal to 25 percent of the amount not withheld and paid over. Any penalty imposed under this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding taxes imposed by this article.

(4) The partnership, Subchapter "S" corporation, or limited liability company and its members shall be jointly and severally liable for the withholding tax liability imposed under this subsection and shall be assessed accordingly.

(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter "S" corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term "composite return" means a return filed by a partnership, Subchapter "S" corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.

(2) Where a partnership, Subchapter "S" corporation, or limited liability company chooses to file a composite return and meets all the requirements of filing such composite return, such partnership, Subchapter "S" corporation, or limited liability company shall be exempt from the withholding requirements imposed under subsection (a) of this Code section.

(3) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(c)(1) If a partnership, Subchapter "S" corporation, or limited liability company fails to remit withholding for a nonresident member and the commissioner determines that such failure is due to a false representation that the member is a resident of Georgia, there shall be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the amount which should have been withheld. The partnership, Subchapter "S" corporation, or limited liability company and the nonresident member shall be jointly and severally liable for any such penalty imposed.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as withholding tax imposed by this article.

(d)(1) Every partnership, Subchapter "S" corporation, or limited liability company which is required to deduct and withhold the withholding tax imposed by subsection (a) of this Code section shall remit such tax and file the required return on a form approved by the commissioner. Taxes withheld on a nonresident member's share of the taxable income sourced to this state shall be due on or before the due date for filing the income tax return for the partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(2) Every partnership, Subchapter "S" corporation, or limited liability company required to deduct and withhold tax under this article shall furnish a written statement or form approved by the commissioner to each nonresident member. Such statement or form shall include the name and federal tax identification number of the partnership, Subchapter "S" corporation, or limited liability company, the member's name and federal tax identification number, the total amount of the nonresident member's share of the taxable income sourced to this state during the taxable year, the total amount of tax deducted and withheld with respect to such member during the year, and such other information as the commissioner shall prescribe. Such statement or form shall be furnished to the nonresident member and filed in duplicate with the commissioner on or before the earlier of the date the income tax return is filed or the due date for filing the income tax return of such partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(3) Any partnership, Subchapter "S" corporation, or limited liability company required to furnish a nonresident member with the written statement required by this subsection which furnishes a false or fraudulent statement or which fails to furnish the statement shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter "S" corporation, or limited liability company shall not be required to deduct and withhold tax for a nonresident member if:

(A) A composite return is filed on behalf of nonresident members pursuant to the requirements of filing such composite returns as set by the commissioner;

(B) The aggregate amount of a nonresident member's share of the taxable income sourced to this state is less than \$1,000.00;

(C) A federally chartered Subchapter "S" corporation fails to meet the requirements of subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit corporate income tax;

(D) Compliance will cause undue hardship on the partnership, Subchapter "S" corporation, or limited liability company, provided that no partnership, Subchapter "S" corporation, or limited liability company shall be exempt from complying with the withholding requirements imposed under subsection (a) of this Code section unless the commissioner approves in writing a written petition for exemption from the withholding requirements based on undue hardship. The commissioner may prescribe the form and contents of such a petition and specify standards for when a partnership, Subchapter "S" corporation, or limited liability company shall not be required to comply with the withholding requirements due to undue hardship;

(E) The partnership is a publicly traded partnership as defined in Section 7704 of the Internal Revenue Code of 1986; or

(F) The member meets one of the exceptions as set forth in the rules and regulations promulgated by the commissioner.

(2) Where a nonresident member's share of the taxable income sourced to this state is subject to withholding under other provisions of Georgia law, such amount shall not be subject to withholding under subsection (a) of this Code section.

(f) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section. (Code 1981, § 48-7-129, enacted by Ga. L. 1993, p. 597, § 3; Ga. L. 1997, p. 450, § 3; Ga. L. 2008, p. 898, § 12/HB 1151; Ga. L. 2012, p. 796, § 2/HB 965.)

The 2012 amendment, effective May 1, 2012, in paragraph (a)(1), substituted "a nonresident member's share of taxable income sourced to this state, whether distributed or not" for "any distributions paid or any distributions credited but not paid to members who are not residents of Georgia", in the first sentence and added the second sentence; substituted "nonresident member's share of the taxable income sourced to this state" for "distribution paid or the distribution credited but not paid" in the first sentence of paragraph (a)(2); substituted a period for "as follows:" at the end of paragraph (d)(1); deleted subpara-

graph (d)(1)(A), which read: "Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S' corporation, or limited liability company to members who are nonresidents shall be due on or before the last day of the calendar month following the calendar month within which the distribution was paid; and"; deleted the subparagraph (d)(1)(B) designation and substituted "Taxes withheld on a nonresident member's share of the taxable income sourced to this state" for "Taxes deducted and withheld on distributions credited but not paid by a partnership, Supchapter 'S' corporation, or

limited liability company to members who are nonresidents"; substituted "the nonresident member's share of the taxable income sourced to this state" for "distributions paid to the member" in the second sentence of paragraph (d)(2); substituted "amount of a nonresident member's share of the taxable income sourced to this state" for "annual distributions made to a member are" in subparagraph (e)(1)(B); and substituted the present provisions of paragraph (e)(2) for the former provisions, which read: "Where distributions paid or distributions credited but not paid, or both, to nonresident members of partner-

ships, Subchapter 'S' corporations, or limited liability companies are subject to withholding under other provisions of Georgia law or represent a return of such member's investment or a return of capital, such distributions shall not be subject to withholding under subsection (a) of this Code section." See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 796, § 3/HB 965, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2012.

ARTICLE 6

LOCAL INCOME TAXES

Effective date. — This article became effective May 20, 2010.

Editor's notes. — Ga. L. 2010, p. 156, § 1, effective May 20, 2010, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 48-7-140 through 48-7-149, relating to local income taxes, and was based on Code 1933, §§ 91A-4001—91A-4010, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1974, p. 506, §§ 1- 5, 7-9, 11; Ga. L. 1995, p. 714, § 3.

Ga. L. 2010, p. 156, § 3(b), not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and

refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of this Act." This Act became effective May 20, 2010.

Ga. L. 2010, p. 156, § 3(c), not codified by the General Assembly, provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective May 20, 2010.

48-7-140. Prohibition of local income taxes.

On or after May 20, 2010, there shall be no local income taxes whatsoever levied or collected by any political subdivision of this state, and no local income tax returns shall be required. (Code 1981, § 48-7-140, enacted by Ga. L. 2010, p. 156, § 2/HB 984.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "On or after May 20, 2010," was substituted for

"On or after the effective date of this Code section" at the beginning of this Code section.

RESEARCH REFERENCES

ALR. — Validity of municipal ordinance imposing income tax or license upon non-

resident in taxing jurisdiction (commuter tax), 48 ALR3d 343.

ARTICLE 7

SETOFF DEBT COLLECTION

48-7-161. Definitions.

As used in this article, the term:

(1) "Claimant agency" means and includes, in the order of priority set forth below:

(A) The Department of Human Services and the Department of Behavioral Health and Developmental Disabilities with respect to collection of debts under Article 1 of Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The Georgia Board for Physician Workforce with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Corrections with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the department;

(G) The State Board of Pardons and Paroles with respect to restitution imposed on a person convicted of a crime and subject to the jurisdiction of the board; and

(H) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult.

(2) "Debt" means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum, any sum which is due and owing any person and is enforceable by the Department of Human Services pursuant to subsection (b) of Code Section 19-11-8, or any sum of restitution or reparation due pursuant to a sentence imposed on a person convicted of a crime and sentenced to restitution or reparation and probation.

(3) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(4) "Refund" means the Georgia income tax refund which the department determines to be due any individual taxpayer. (Code 1933, § 91A-4102, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 10; Ga. L. 1986, p. 825, § 1; Ga. L. 1988, p. 937, § 1; Ga. L. 1991, p. 139, § 2; Ga. L. 2000, p. 136, § 48; Ga. L. 2004, p. 148, § 1; Ga. L. 2005, p. 88, § 7/HB 172; Ga. L. 2009, p. 453, § 2-21/HB 228; Ga. L. 2011, p. 459, § 5/HB 509.)

The 2011 amendment, effective July 1, 2011, substituted "Georgia Board for Physician Workforce" for "State Medical Education Board" in subparagraph (1)(D).

48-7-165. (For effective date, see note.) Hearing procedure; adjustments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.

(a)(1) If the claimant agency receives written application contesting the setoff or the sum upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the sum is valid according to the procedures established under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(2) A request for a hearing pursuant to the Internal Revenue Code to contest the collection of past-due support may be consolidated with a request for a hearing under paragraph (1) of this subsection. If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(b) (For effective date, see note.) The hearing established by subsection (a) of this Code section shall be in lieu of a hearing before the department to determine the validity of the debt or the propriety of the setoff.

(c) No issues which have been previously litigated shall be considered at the hearing.

(d) Appeals from actions taken at the hearing allowed under this Code section shall be in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1933, § 91A-4106, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 11; Ga. L. 1986, p. 10, § 48; Ga. L. 2012, p. 318, § 11/HB 100.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2013. For version of subsection (b) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, deleted “pursuant to Code Section 50-13-12; and the department shall not grant a hearing” following “be-

fore the department” near the middle of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case.

CHAPTER 7A

TAX CREDITS

Sec.		
48-7A-1.	Legislative findings and purposes [Repealed].	credit claimed against tax liability; period for filing claims for credit; applicability to food stamp recipients; authority of commissioner.
48-7A-3.	Persons entitled to claim tax credit; tax credits schedule; tax	

48-7A-1. Legislative findings and purposes.

Reserved. Repealed by Ga. L. 2010, p. 1163, § 4/HB 1069, effective June 4, 2010.

Editor’s notes. — This Code section was based on Ga. L. 1991, p. 87, § 1. Ga. L. 2010, p. 1163, § 7, not codified by the General Assembly, provides that the

repeal and reservation of this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

48-7A-3. Persons entitled to claim tax credit; tax credits schedule; tax credit claimed against tax liability; period for filing claims for credit; applicability to food stamp recipients; authority of commissioner.

(a) Except as otherwise provided in subsection (e) of this Code section, each resident taxpayer who files an individual income tax return for a taxable year and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Georgia individual income tax purposes may claim a tax credit against

the resident taxpayer’s individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that:

- (1) A husband and wife filing a joint return shall each be deemed a dependent for purposes of such joint return; and
- (2) A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.
- (b) Each taxpayer may claim a tax credit in the amount indicated for each adjusted gross income bracket as shown in the schedule below multiplied by the number of dependents which the taxpayer is entitled to claim. Each taxpayer 65 years of age or over may claim double the tax credit.

TAX CREDIT SCHEDULE

<u>Adjusted Gross Income</u>	<u>Tax Credit</u>
Under \$6,000.00	\$ 26.00
6,000.00 but not more than 7,999.00	20.00
8,000.00 but not more than 9,999.00	14.00
10,000.00 but not more than 14,999.00	8.00
15,000.00 but not more than 19,999.00	5.00

(c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be deductible from the resident taxpayer’s individual income tax liability, if any, for the tax year in which it is properly claimed; provided, however, that in no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused credit amount shall not be allowed to be carried forward to the taxpayer’s succeeding years’ tax liability. No such credit shall be allowed the taxpayer against prior years’ tax liability.

(d) All claims for a tax credit under this Code section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

(e) Any individual who receives a food stamp allotment for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(e.1) Any individual incarcerated or confined in any city, county, municipal, state, or federal penal or correctional institution for all or

any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(f) The commissioner shall be authorized by rule and regulation to provide for the proper administration of this Code section. (Code 1981, § 48-7A-3, enacted by Ga. L. 1991, p. 87, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2004, p. 410, § 7; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 1163, § 5/HB 1069.)

The 2010 amendment, effective June 4, 2010, in subsection (a), added “and” at the end of paragraph (a)(1), deleted “; and” at the end of paragraph (a)(2), and deleted former paragraph (a)(3), which read: “A resident individual who has no income or no income taxable under Chapter 7 of this title and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Georgia individual income tax purposes may also claim a tax credit as set forth in this Code section.”; and, in subsection (c), added the proviso at the end of the first sentence and deleted the former second sentence, which read: “In the event the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer, provided that a tax credit properly claimed by a resident individual who has

no income tax liability shall be paid to the resident individual; provided, further, that no refunds or payment on account of the tax credit allowed by this Code section shall be made for amounts less than \$1.00.” See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 1163, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

CHAPTER 8

SALES AND USE TAXES

Article 1		Sec.	
State Sales and Use Tax		48-8-3.3.	(Effective January 1, 2013. See note.) Definitions; applicability; criteria for eligibility; rules and regulations.
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GENERAL PROVISIONS		48-8-6.	Prohibition of political subdivisions from imposing various taxes; ceiling on local sales and use taxes; taxation of mobile telecommunications.
Sec.		48-8-14.	Restrictions on state contracts with nongovernmental vendors filing or refusing to collect sales or use taxes.
48-8-2.	(For effective date, see note.) Definitions.		
48-8-3.	(For effective date, see note.) Exemptions.		
48-8-3.2.	(Effective January 1, 2013) Definitions; exemption; applicability; examples.		

Sec.		Sec.	
48-8-17.	Collection of taxes on gasoline and aviation fuel; temporary suspension.	48-8-50.	Compensation of dealers for reporting and paying tax; reimbursement deduction.
48-8-17.1.	Ratification of Executive Order on prepaid taxes; suspension of provisions [Repealed].	48-8-52.	Dealers' duty to keep records of sales, purchases, and invoices of goods; examination by commissioner; assessment and collection when no or incorrect invoice produced; presumption of correctness; fixing of actual consideration for lease or rental; collection.
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IMPOSITION, RATE, COLLECTION, AND ASSESSMENT			
48-8-30.	Imposition of tax; rates; collection.	48-8-58.	Property sold returned to dealer by purchaser; "return allowance" defined; credit for tax payments; deduction of return allowance; claim for refund of tax credit by retired dealer; forms; effect of failure to secure forms.
48-8-31.	Tax computation to be carried to third decimal place; rounding.	48-8-59.	Dealer's certificate of registration; one license for all operations of single business in state; application for certificate; contents; conditions for valid certificate; renewal fee after revocation or suspension of certificate.
48-8-32.	Tax collectable from dealers; rate for retail sales price and purchase price.	48-8-63.	"Nonresident subcontractor" defined; payment of tax by contractors furnishing tangible personal property and services; liability of seller; withholding of payments due subcontractor; rate; bond; exemption of property unconsumed in use; property deemed consumed; property of the state or of the United States.
48-8-36.	Prohibition of advertising by dealer of assumption of payment of tax; exception; liability of dealer.	48-8-67.	Distribution of certain unidentifiable sales and use tax proceeds; limitations; powers and duties of state revenue commissioner.
48-8-38.	Burden of proof on seller as to taxability; certificate that property purchased for resale; requirements of purchaser having certificate; contents; form for electronic claim of exemption; proof of claimed exemption; relief of seller from applicable tax.	48-8-68.	Relief from liability in certain circumstances for failure to collect tax at new rate.
48-8-39.	Effect of use other than retention, demonstration, or display by giver of certificate or by processor, manufacturer, or converter.	48-8-69.	Purchases from printed catalogs; local jurisdiction boundary changes.
48-8-45.	Reporting cash and credit sales; change of basis of accounting; payment of tax at time of filing return under cash basis of accounting; deduction of bad debts under accrual basis of accounting; availability of refund; bad debt deduction or refund nonassignable; allocation of bad debts.	48-8-70.	Determination of ZIP Code designation applicable to particular purchases; rebuttable
48-8-49.	Dealers' returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.		

Sec.

- presumption of seller's due diligence.
- 48-8-71. Immunity from liability for reliance upon erroneous data provided by the state on tax rates, local boundaries, and taxing jurisdiction assignments.
- 48-8-72. Over-collected sales or use tax.
- 48-8-73. Immunity from liability for reliance upon erroneous taxability matrix data provided by the state.
- 48-8-74. Effective date for sales tax rate change.
- 48-8-75. Purchaser's immunity from liability for failure to pay correct sales tax under certain circumstances.
- 48-8-76. Compliance with terms of Streamlined Sales and Use Tax Agreement; relief from certain obligations.
- 48-8-77. Sourcing; definitions; sales of "advertising and promotional direct mail" and "other direct mail"; sales of telecommunication service.
- 48-8-77.1. Certification of review software by department; relief from liability.

Article 2

Joint County and Municipal Sales and Use Tax

- 48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability to sales of motor fuels and food and beverages.
- 48-8-87. Administration and collection of tax by commissioner; applicability of Article 1 of this chapter; first application of moneys to taxpayers' state tax liabilities; compensation of dealers if payments not delinquent; rate.
- 48-8-89. Distribution and use of proceeds; certificate specifying percentage of proceeds for each political subdivision; de-

Sec.

- termination of proceeds for absent municipalities; procedure for filing certificates; effect of failure to file; renegotiation of certificate.
- 48-8-89.1. Procedure for certifying additional qualified municipalities; issuance of new distribution certificate; cessation of authority to collect tax ceases upon failure to file new certificate.
- 48-8-92. Referendum election to decide discontinuing imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.
- 48-8-93. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.
- 48-8-96. Taxation of property in consolidated governments; change in tax rates.

Article 2A

Homestead Option Sales and Use Tax

- 48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.
- 48-8-104. Exclusive administration of tax by commissioner; identification of location where tax collected; manner of disbursement of proceeds.
- 48-8-107. Property ordered by and delivered to purchaser at point outside geographical area of special district in which tax imposed.

Article 3

County Sales and Use Taxes

PART 1

COUNTY SPECIAL PURPOSE LOCAL OPTION SALES TAX

- 48-8-110.1. Authorization for county special purpose local option sales

Sec.

tax; subjects of taxation; applicability to sales of motor fuels and food and beverages.

48-8-113. Administration and collection by commissioner; application; deduction to dealers.

48-8-117. Inapplicability of tax to certain sales of tangible personal property outside taxing county.

48-8-122. Record of projects on which tax proceeds are used; annual reporting and newspaper publication of report.

48-8-123. Modification of projects approved by referendum which have become infeasible in connection with county special purpose local option sales and use tax.

48-8-124. Enforcement.

PART 2

SALES TAX FOR EDUCATIONAL PURPOSES

48-8-141. Manner of imposition of tax; report.

Article 3A

Uniform Sales and Use Tax Administration

48-8-161. Definitions.

48-8-167. Member of Streamlined Sales Tax Governing Board.

Article 4

Water and Sewer Projects and Costs Tax

48-8-200. Definitions.

48-8-201. Intergovernmental contract for distribution of tax proceeds; approval of referendum by voters; cap on aggregate amount of tax.

48-8-203. Imposition of tax following approval; termination of tax.

48-8-204. Administration and collection of tax; deduction.

48-8-208. No tax on products ordered and delivered outside geographical area of municipality.

Article 5

Special District Transportation Sales and Use Tax

PART 1

IN GENERAL

Sec.

48-8-240. Findings; purpose.

48-8-241. Creation of special districts; tax rate.

48-8-242. Definitions.

48-8-243. Criteria for development of investment list of projects and programs; report; gridlock.

PART 2

ELECTION, IMPOSITION, AND PROCEDURES

48-8-244. Election; ballot.

48-8-244.1. Effect of special district levy on state allocation of funds under Code Section 32-5-27.

48-8-245. Collection of tax; cessation of tax.

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Article 6

Georgia Tourism Development

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48-8-270.	Short title.	48-8-275.	Authority of Department of Community Affairs to enter into agreements with approved companies; required terms and provisions of agreements.
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48-8-274.	Standards for filing tourism attraction project applications; analysis of projects by independent consultants; con-		

Law reviews. — For article, “Curing the Structural Defect in State Tax Systems: Expanding the Tax Base to Include Services,” see 61 Mercer L. Rev. 491 (2010).

ARTICLE 1

STATE SALES AND USE TAX

PART 1

GENERAL PROVISIONS

48-8-2. (For effective date, see note.) Definitions.

As used in this article, the term:

- (1) “Alcoholic Beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
- (2) “Ancillary services” means services that are associated with or incidental to the provision of “telecommunications services,” including but not limited to “detailed telecommunications billing service,” “directory assistance,” “vertical service,” and “voice mail services.”
- (3) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) "Distinct and identifiable products" shall not include:

(i) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompanies the "retail sale" of the products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(ii) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge."

(iii) Items included in the "sales price."

(B) The term "one nonitemized price" shall not include a price that is separately identified by product on binding sales or other supporting sales related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a "bundled transaction" as defined above, is not a "bundled transaction" if it is:

(i) The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii)(I) A transaction that includes taxable products and non-taxable products and the "purchase price" or "sales price" of the taxable products is de minimis. As used in this subparagraph the term, "de minimis" means the seller's "purchase price" or "sales price" of the taxable product is 10 percent or less of the total "purchase price" or "sales price" of the bundled products.

(II) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "pur-

chase price” and “sales price” of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) The “retail sale” of exempt tangible personal property and taxable tangible personal property where:

(I) The transaction includes “food and food ingredients,” “drugs,” “durable medical equipment,” “mobility enhancing equipment,” “over-the-counter drugs,” or “prosthetic devices”; and

(II) The seller’s “purchase price” or “sales price” of the taxable tangible personal property is 50 percent or less of the total “purchase price” or “sales price” of the bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the 50 percent determination for a transaction.

(4) “Business” means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit, or advantage.

(5) “Coin operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(7) “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” shall not include the telecommunications services used to reach the conference bridge.

(8) (For effective date, see note.) “Dealer” means every person who:

(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property in this state without acquiring title to the property;

(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property in this state without transferring title to the property;

(E) Maintains or utilizes within this state an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business, whether owned by such person or any other person, other than a common carrier acting in its capacity as such;

(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state tangible personal property;

(H) Solicits business by an agent, employee, representative, or any other person;

(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer's only activity in this state is:

(i) Advertising or solicitation by:

(I) Direct mail, catalogs, periodicals, or advertising fliers;

(II) Means of print, radio, or television media; or

(III) Telephone, computer, the Internet, cable, microwave, or other communication system;

(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail; or

(iii) To engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer's sole physical presence in this state and the dealer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than \$100,000.00 of net income from those activities in this state

during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

The exceptions provided in divisions (i), (ii), and (iii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

(i) The in-state dealer to which the affiliate is related does not engage in any of the following activities on behalf of the affiliate:

(I) Advertising;

(II) Marketing;

(III) Sales; or

(IV) Other services; and

(ii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate's return;

As used in this subparagraph, the term "affiliate" means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

(K)(i) Makes sales of tangible personal property or services that are taxable under this chapter if a related member, as defined in Code Section 48-7-28.3, other than a common carrier acting in its capacity as such, that has substantial nexus in this state:

(I) Sells a similar line of products as the person and does so under the same or a similar business name; or

(II) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(L)(i) Makes sales of tangible personal property or services that are taxable under this chapter if any other person, other than a common carrier acting in its capacity as such, who has a substantial nexus in this state:

(I) Delivers, installs, assembles, or performs maintenance services for the person's customers within this state;

(II) Facilitates the person's delivery of property to customers in this state by allowing the person's customers to pick up property sold by the person at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state; or

(III) Conducts any other activities in this state that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(M)(i) Enters into an agreement with one or more other persons who are residents of this state under which the resident, for a commission or other consideration, based on completed sales, directly or indirectly refers potential customers, whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise, to the person, if the cumulative gross receipts from sales by the person to customers in this state who are referred to the person by all residents with this type of an agreement with the person is in excess of \$50,000.00 during the preceding 12 months.

(ii) The presumption that a person described in this subparagraph is a dealer in this state may be rebutted by submitting proof that the residents with whom the person has an agreement did not engage in any activity within this state that was significantly associated with the person's ability to establish or maintain the person's market in the state during the preceding

12 months. Such proof may consist of sworn written statements from all of the residents with whom the person has an agreement stating that they did not engage in any solicitation in this state on behalf of the person during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date the person and the resident entered into the agreement described in this subparagraph;

(N) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a “dealer” in Georgia merely because such person:

(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial printer’s premises or at any place where the commercial printer performs services on behalf of that person;

(O) Any ruling, agreement, or contract, whether written or oral and whether express or implied, between a person and this state’s executive branch or any other state agency or department stating, agreeing, or ruling that such person is not a dealer required to

collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or a related member shall be null and void unless it is specifically approved by a majority vote of each body of the General Assembly. For purposes of this subparagraph, the term "related member" has the same meaning as in Code Section 48-7-28.3;

(P) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

(Q) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require.

(9) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(10) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(11) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(11.1) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subparagraph;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a

form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplements Facts" box found on the label as required pursuant to 21 C.F.R. Section 101.36.

(12) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(13) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(14) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than "food and food ingredients," "dietary supplements," or "alcoholic beverages":

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(15) "Durable medical equipment" means equipment including repair and replacement parts for the same, but does not include "mobility enhancing equipment," which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(16) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include alcoholic beverages, dietary supplements, or tobacco.

(17) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1). "Lease or rental" shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100.00 or 1 percent of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or install the tangible personal property.

(18) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(19) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, by which the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(20) "Mobility enhancing equipment" means equipment including repair and replacement parts to the same, but does not include "durable medical equipment," which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(20.1) “Over-the-counter drug” means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. Section 201.66. The “over-the-counter drug” label includes:

(A) A “Drug Facts” panel; or

(B) A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance, or preparation.

(21) “Place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” must be within the licensed service area of the home service provider.

(22) “Prepaid calling service” means the right to access exclusively “telecommunications services,” which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) “Prepaid local tax” means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as set forth in subparagraph (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions.

(24) “Prepaid state tax” means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-14.

(25) "Prepaid wireless calling service" means a "telecommunications service" that provides the right to utilize "mobile wireless service" as well as other nontelecommunications services including the download of digital products "delivered electronically," content, and "ancillary services," which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(26) "Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

(27) "Prepared food" means:

(A) Food:

- (i) Sold in a heated state or heated by the seller;
- (ii) With two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (iii) Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(B) "Prepared food" shall not include food:

- (i) That is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as in Chapter 3,

part 401.11 of the United States Food and Drug Administration Food Code so as to prevent food borne illnesses;

(ii) Sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing, except for industry group 3118, bakeries and tortilla manufacturing, if sold without eating utensils provided by the seller; or

(iii) Sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(29) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or

(C) Support a weak or deformed portion of the body.

"Prosthetic device" shall not include hearing aids.

(30) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(30.1) "Referral from a SOURCE Case Management Provider" means the authorization of, arrangement for, or coordination of long-term care services, including nursing home services by a SOURCE Case Management Provider. This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(31) "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the commissioner's rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner's rules and regulations shall himself be liable for and shall pay the tax. The terms "retail sale" or "sale at retail" include but are not limited to the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation,

local telephone services, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale;

(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

(C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, or entertainment including, but not limited to:

- (i) Billiard and pool rooms;
- (ii) Bowling alleys;
- (iii) Amusement devices;
- (iv) Musical devices;
- (v) Theaters;
- (vi) Opera houses;
- (vii) Moving picture shows;
- (viii) Vaudeville;
- (ix) Amusement parks;
- (x) Athletic contests including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;
- (xi) Skating rinks;
- (xii) Race tracks;
- (xiii) Public bathing places;
- (xiv) Public dance halls; and
- (xv) Any other place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged;

(D) Charges made for participation in games and amusement activities;

(E) Sales of tangible personal property to persons for resale when there is a likelihood that the state will lose tax funds due to the difficulty of policing the business operations because:

- (i) Of the operation of the business;

- (ii) Of the very nature of the business;
- (iii) Of the turnover of so-called independent contractors;
- (iv) Of the lack of a place of business in which to display a certificate of registration;
- (v) Of the lack of a place of business in which to keep records;
- (vi) Of the lack of adequate records;
- (vii) The persons are minors or transients;
- (viii) The persons are engaged in essentially service businesses; or
- (ix) Of any other reasonable reason.

The commissioner may promulgate rules and regulations requiring vendors of persons described in this subparagraph to collect the tax imposed by this article on the retail price of the tangible personal property. The commissioner shall refuse to issue certificates of registration and may revoke certificates of registration issued in violation of his rules and regulations;

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated telephone service, except as otherwise provided in subparagraph (G) of this paragraph;

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes; or

(H)(i) Charges made for services by a person which are the subject of a referral from a SOURCE Case Management Provider.

(ii) This subparagraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commis-

sioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(32) “Retailer” means every person making sales at retail or for distribution, use, consumption, or storage for use or consumption in this state and has the same meaning as “seller” in Code Section 48-8-161.

(33)(A) “Sale” means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration except as otherwise provided in subparagraph (B) of this paragraph and includes, but is not limited to:

(i) The fabrication of tangible personal property for consumers who directly or indirectly furnish the materials used in such fabrication;

(ii) The furnishing, repairing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property; or

(iii) A transaction by which the possession of property is transferred but the seller retains title as security for the payment of the price.

(B) Notwithstanding a dealer’s physical presence, in the case of a motor vehicle retail sale, excluding lease or rental, the taxable situs of the transaction for the purposes of collecting local sales and use taxes shall be the county of motor vehicle registration of the purchaser.

(34)(A) “Sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale; and

(iv) Delivery charges.

(B) “Sales price” shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;

(v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and

(vi) Credit for any trade-in.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a "preferred customer" card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received

by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(34.1) “SOURCE Case Management Provider” means an entity that has successfully completed the Georgia Medicaid Enhanced Case Management Application and enrollment process, including any related required training, and has entered into a contract with the Department of Community Health, Division of Medical Assistance to provide enhanced case management services. This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(35) “Storage” means any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than sale at retail in the regular course of business.

(36) “Streamlined sales tax agreement” means the Streamlined Sales and Use Tax Agreement under Code Section 48-8-162.

(37) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software. “Tangible personal property” does not mean stocks, bonds, notes, insurance, or other obligations or securities.

(38) “Telecommunications nonrecurring charges” means an amount billed for the installation, connection, change, or initiation of “telecommunications service” received by the customer.

(39) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer’s premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(39.1) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that includes tobacco.

(40) "Use" means the exercise of any right or power over tangible personal property incident to the ownership of the property including, but not limited to, the sale at retail of the property in the regular course of business.

(41) "Use tax" includes the use, consumption, distribution, and storage of tangible personal property as defined in this article.

(42) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(43) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. (Ga. L. 1951, p. 360, §§ 3, 4; Ga. L. 1960, p. 153, § 3; Ga. L. 1971, p. 85, § 1; Ga. L. 1978, p. 1664, § 1; Code 1933, § 91A-4501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 81-84; Ga. L. 1980, p. 10, § 22; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 1243, § 1; Ga. L. 1992, p. 1521, § 1; Ga. L. 1994, p. 928, § 4A; Ga. L. 1995, p. 10, § 48; Ga. L. 1996, p. 220, § 7; Ga. L. 1998, p. 124, § 3; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 975, § 1; Ga. L. 2003, p. 355, § 3; Ga. L. 2003, p. 665, § 10;

Ga. L. 2005, p. 788, § 1/HB 22; Ga. L. 2006, p. 59, § 1/HB 111; Ga. L. 2007, p. 309, § 1/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 1/HB 1221; Ga. L. 2011, p. 38, §§ 2, 3/HB 168; Ga. L. 2011, p. 674, §§ 1-2, 1-3/HB 117; Ga. L. 2012, p. 257, § 6-1/HB 386; Ga. L. 2012, p. 694, § 3/HB 729.)

Delayed effective date. — Paragraph (8), as set out above, becomes effective October 1, 2012. Until October 1, 2012, paragraph (8) reads as follows: “Dealer’ means every person who:

“(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

“(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

“(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property without acquiring title to the property;

“(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property without transferring title to the property;

“(E) Maintains or has within this state, indirectly or by a subsidiary, an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business;

“(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

“(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state tangible personal property;

“(H) Solicits business by an agent, employee, representative, or any other person;

“(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer’s only activity in this state is:

“(i) Advertising or solicitation by:

“(I) Direct mail, catalogs, periodicals, or advertising fliers;

“(II) Means of print, radio, or television media; or

“(III) Telephone, computer, the Internet, cable, microwave, or other communication system; or

“(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail.

“The exceptions provided in divisions (i) and (ii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

“(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

“(i) The in-state dealer to which the affiliate is related does not engage in any of the following activities on behalf of the affiliate:

“(I) Advertising;

“(II) Marketing;

“(III) Sales; or

“(IV) Other services; and

“(iii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate’s return;

“As used in this subparagraph, the term ‘affiliate’ means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

“(K) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident

or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a 'dealer' in Georgia merely because such person:

"(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

"(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

"(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

"(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

"nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of that person;

"(L) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

"(M) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require."

The 2010 amendment, effective January 1, 2011, rewrote this Code section.

The 2011 amendments. — The first 2011 amendment, effective April 27, 2011, added paragraphs (11.1), (20.1), and (39.1); inserted ", dietary supplements," near the end of paragraph (16); added the undesignated language at the end of the paragraph (29); substituted "sale; and" for "sale, other than delivery and installation charges;" in division (34)(A)(iii); substituted a period for a semicolon at the end of division (34)(A)(iv); deleted division (34)(A)(v), which read: "Installation charges; and"; and deleted division (34)(A)(vi), which read: "Credit for any trade-in, except as otherwise provided in division (vii) of subparagraph (B) of this paragraph.;" in subparagraph (34)(B), inserted a comma in division (34)(B)(ii); deleted division (34)(B)(v), which read: "Charges by the seller for any services necessary to complete the sale if they are separately stated on the invoice, billing, or similar document given to the purchaser;"; redesignated former divisions (34)(B)(vi) and (34)(B)(vii) as present divisions (34)(B)(v) and (34)(B)(vi), respectively, and, in division (34)(B)(vi), deleted "motor vehicle" preceding "trade-in"; and substituted "third-party" for "third party" in subdivision (34)(C)(iv)(III). The second 2011 amendment, effective July 1, 2011, added paragraph (30.1); deleted "or" at the end of subparagraph (31)(F); substituted "; or" for a period at the end of subparagraph (31)(G); added subparagraph (31)(H); and added paragraph (34.1).

The 2012 amendments. — The first 2012 amendment, effective October 1, 2012, inserted "in this state" in subparagraphs (8)(C) and (8)(D); in subparagraph (8)(E), substituted "utilizes within this state an" for "has within this state, indirectly or by a subsidiary, an" near the beginning, and added ", whether owned by such person or any other person, other than a common carrier acting in its capacity as such" at the end; deleted "or" at the end of subdivision (8)(I)(i)(III); added "; or" at the end of division (8)(I)(ii); added division (8)(I)(iii); substituted "divisions (i), (ii), and (iii)" for "divisions (i) and (ii)" in the undesignated language at the end

of division (8)(I)(iii); added subparagraphs (8)(K) through (8)(M); redesignated former subparagraph (8)(K) as present subparagraph (8)(N); added subparagraph (8)(O); and redesignated former subparagraphs (8)(L) and (8)(M) as present subparagraphs (8)(P) and (8)(Q), respectively. The second 2012 amendment, effective May 1, 2012, added the third sentence of the introductory language of paragraph (17); substituted "\$100.00 or 1 percent" for "one hundred dollars or one percent" in subparagraph (17)(B); substituted "units or dollars" for "units of dollars" in paragraph (25); and, in subparagraph (33)(B), substituted "sale, excluding lease or rental," for "sale or a motor vehicle lease or rental when the lease or rental period exceeds 30 days and when the purchaser or lessee is a resident of this state," and deleted "or lessee" at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "This paragraph" was substituted for "This subparagraph" in the last sentence in paragraphs (30.1) and (34.1).

Pursuant to Code Section 28-9-5, in 2012, "This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date" was substituted for "This subparagraph shall take effect 90 days after the effective date of

this Act and shall apply to sales made, uses occurring, and services rendered on or after the effective date of this subparagraph without regard to the date" in subparagraph (8)(M)(ii).

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-3. (For effective date, see note.) Exemptions.

The sales and use taxes levied or imposed by this article shall not apply to:

(1) Sales to the United States government, this state, any county or municipality of this state, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provi-

sion of this article. No exemption is granted with respect to tangible personal property installed to serve a particular property site;

(3) The federal retailers' excise tax if the tax is billed to the consumer separately from the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this title relating to motor fuel taxes;

(4) Sales by counties and municipalities arising out of their operation of any public transit facility and sales by public transit authorities or charges by counties, municipalities, or public transit authorities for the transportation of passengers upon their conveyances;

(5)(A) Fares and charges, except charges for charter and sightseeing service, collected by an urban transit system for the transportation of passengers.

(B) As used in this paragraph, the term:

(i) "Public transit system primarily urban in character" shall include a transit system operated by any entity which provides passenger transportation services by means of motor vehicles having passenger-carrying capacity within or between standard metropolitan areas and urban areas, as those terms are defined in Code Section 32-2-3, of this state.

(ii) "Urban transit system" means a public transit system primarily urban in character which is operated by a street railroad company or a motor carrier, is subject to the jurisdiction of the Department of Public Safety, and whose fares and charges are regulated by the Department of Public Safety, or is operated pursuant to a franchise contract with a municipality of this state so that its fares and charges are regulated by or are subject to the approval of the municipality. An urban transit system certificate shall be issued by the Department of Public Safety, or by the municipality which has regulatory authority, upon an affirmative showing that the applicant operates an urban transit system. The certificate shall be obtained and filed with the commissioner and shall continue in effect so long as the holder of such certificate qualifies as an urban transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(6.2) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes;

(6.3) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) For the period commencing on July 1, 2008, and ending on June 30, 2010, sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public Health Service Act, 42 U.S.C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to mentally retarded persons, when such organization is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.3) For the period commencing July 1, 2008, and ending June 30, 2010, sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(A) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(B) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(C) Is paid for by government funds of a foreign country; and

(D) Is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in this state;

(12) Food and food ingredients and prepared food sold and served to pupils and employees of public schools as part of a school lunch program;

(13) Sales of prepared food and food and food ingredients consumed by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property, including, but not limited to, charges for accessorial services such as refrigeration, switching, storage, and demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) (For effective date, see note.) Reserved;

(26) (For effective date, see note.) Reserved;

(27) (For effective date, see note.) Reserved;

(28) (For effective date, see note.) Reserved;

(29) (For effective date, see note.) Reserved;

(29.1) (For effective date, see note.) Reserved;

(30) The sale of a vehicle to a service-connected disabled veteran when the veteran received a grant from the United States Depart-

ment of Veterans Affairs to purchase and specially adapt the vehicle to his disability;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport, to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B)(i) For the period of time beginning July 1, 2011, and ending June 30, 2012, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from state sales and use tax until the aggregate state sales and use tax liability of the taxpayer during such period with respect to jet fuel exceeds \$20 million, computed as if the exemption provided in this division was not in effect during such period. Thereafter during such period, the exemption provided by this division shall not apply to the sale or use of jet fuel to or by the qualifying airline.

For purposes of this division, the terms “qualifying airline” and “qualifying airport” shall have the same meanings as those terms were defined under the prior provisions of this paragraph as it existed immediately prior to July 1, 2012.

(ii) For the period of time beginning July 1, 2012, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from 1 percent of the 4 percent state sales and use tax.

(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt at all times from the sales or use tax levied and imposed as authorized pursuant to Part 1 of Article 3 of this chapter. As used in this subparagraph, the term “qualifying airport” means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year, and the term “qualifying airline” shall have the same meaning as set forth in subparagraph (E) of this paragraph.

(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall not apply to any other local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965,” or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.

(E) For purposes of division (ii) of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a “qualifying airline” shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire.

(F) For purposes of division (ii) of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, the term “qualifying airport” means a certificated air carrier airport in Georgia.

(G) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(34) (For effective date, see note.) Reserved;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the conveyance and storage

of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth \$5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth \$5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, "remanufacture of aircraft engines or aircraft engine parts or components" means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3) (For effective date, see note.) Reserved;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) "Alternative fuel facility" means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) "Used in or for the construction" means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products has begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35) (For effective date, see note.) Reserved;

(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) "Qualified water conservation facility" means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) "Water conservation" means a minimum 10 percent reduction resulting in the relinquishment or transfer of annual permitted water usage from existing ground-water sources due to increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) (For effective date, see note.) Reserved;

(38) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and

chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph (2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 17 of this title;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in

another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code;

(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons, the sale or use of insulin regardless of whether the insulin is dispensable only by prescription, and the sale or use of prescription eyeglasses and contact lenses including, without limitation, prescription contact lenses distributed by the manufacturer to licensed dispensers as free samples not intended for resale and labeled as such; and

(ii) The sale or use of drugs lawfully dispensable by prescription for the treatment of natural persons which are dispensed or distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor; and the use of drugs and durable medical equipment lawfully dispensed or distributed without charge solely for the purposes of a clinical trial approved by either the United States Food and Drug Administration or by an institutional review board.

(B) For purposes of this paragraph, the term:

(i) "Drug" means the same as provided in Code Section 48-8-2 but shall not include over-the-counter drugs or tobacco.

(ii) "Institutional review board" means an institutional review board as provided in 21 C.F.R. Section 56.

(C) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(48) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs;

(49) (For effective date, see note.) Reserved;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

(50) Sales of insulin syringes and blood glucose level measuring strips dispensed without a prescription;

(51) Sales of oxygen prescribed by a licensed physician;

(52) The sale or use of hearing aids;

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) Sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(57)(A) The sale of food and food ingredients to an individual consumer for off-premises human consumption, to the extent provided in this paragraph.

(B) For the purposes of this paragraph, the term “food and food ingredients” as defined in Code Section 48-8-2 shall not include prepared food, drugs, or over-the-counter drugs.

(C) The exemption provided for in this paragraph shall not apply to the sale or use of food and food ingredients when purchased for any use in the operation of a business.

(D)(i) The exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(ii) For the purposes of this subparagraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to any article of this chapter.

(E) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(57.1)(A) From July 1, 2006, until June 30, 2010, sales of food and food ingredients to a qualified food bank.

(B) As used in this paragraph, the term “qualified food bank” means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low income persons residing in this state.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food which is donated to a qualified nonprofit agency and which are used for hunger relief purposes.

(B) As used in this paragraph, the term “qualified nonprofit agency” means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food which is donated following a natural disaster and which are used for disaster relief purposes.

(B) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58) Reserved;

(59)(A) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

(B) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council;

(60) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17;

(64) (For effective date, see note.) Reserved;

(65)(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(68)(A) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under North American Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512, 541513, or 541519 where such sale of computer equipment for any calendar year exceeds \$15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds \$15 million.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term "computer equipment" means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) The term shall not include:

(I) Telephone central office equipment or other voice data transport technology; or

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partner-

ship, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first \$7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first \$2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first \$1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first \$1.44 per gallon of the sales price or cost price of propane, the

first \$57.90 per ton of petroleum coke, the first \$57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(72) The sale or use of all mobility enhancing equipment prescribed by a physician;

(73) Reserved;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a

cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) "Digital broadcast equipment" means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) "Federally licensed commercial or public radio or television broadcast station" means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of any covered item. The exemption provided by this paragraph shall apply only to sales occurring during periods:

(i) Commencing at 12:01 A.M. on August 10, 2012, and concluding at 12:00 Midnight on August 11, 2012; and

(ii) Commencing at 12:01 A.M. on August 9, 2013, and concluding at 12:00 Midnight on August 10, 2013.

(B) As used in this paragraph, the term "covered item" shall mean:

(i) Articles of clothing and footwear with a sales price of \$100.00 or less per article of clothing or pair of footwear, excluding accessories such as jewelry, handbags, umbrellas, eyewear, watches, and watchbands;

(ii) A single purchase, with a sales price of \$1,000.00 or less, of personal computers and personal computer related accessories purchased for noncommercial home or personal use, including personal computer base units and keyboards, personal digital assistants, handheld computers, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, whether or not they are to be utilized in association with the personal computer base unit. Computer and computer related accessories shall not include furniture and any systems, devices, software, or peripherals designed or intended primarily for recreational use; and

(iii) Noncommercial purchases of general school supplies to be utilized in the classroom or in classroom related activities, such as homework, up to a sales price of \$20.00 per item including pens, pencils, notebooks, paper, book bags, calculators, dictionaries, thesauruses, and children's books and books listed on approved school reading lists for pre-kindergarten through twelfth grade.

(C) The exemption provided by this paragraph shall not apply to rentals, sales in a theme park, entertainment complex, public

lodging establishment, restaurant, or airport or to purchases for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from June 4, 2003, until January 1, 2007, sales of tangible personal property to, or used in the construction of, an aquarium owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(77) (For effective date, see note.) Reserved;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 5, 2004 until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is \$200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) (For effective date, see note.) Reserved;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 17, 2004 until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term: "corporate attraction" means any tourist attraction facility constructed on or after May 17, 2004, dedicated to the history and products of a corporation which costs exceeds \$50 million, is greater than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commis-

sioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on the ground, and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of energy efficient products or water efficient products with a sales price of \$1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during periods:

(i) Commencing at 12:01 A.M. on October 5, 2012, and concluding at 12:00 Midnight on October 7, 2012; and

(ii) Commencing at 12:01 A.M. on October 4, 2013, and concluding at 12:00 Midnight on October 6, 2013.

(B) As used in this paragraph, the term:

(i) "Energy efficient product" means any energy efficient product for noncommercial home or personal use consisting of any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(ii) "Water efficient product" means any product used for the conservation or efficient use of water which has been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency requirements or which has been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of energy efficient products or water efficient products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term “biomass material” means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term “national infantry museum and heritage park facility” means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85) Repealed;

(86) For the period commencing on July 1, 2007, and ending on June 30, 2013, the sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired

or maintained in this state so long as such aircraft is not registered in this state;

(87)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until June 30, 2011, sales of tangible personal property used for and in the renovation or expansion of a zoological institution.

(B) As used in this paragraph, the term “zoological institution” means a nonprofit wildlife park, terrestrial institution, or facility which is:

(i) Open to the public, that exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term “civil rights museum” means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 70,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public;

(89) For the period commencing on July 1, 2009, and ending on June 30, 2011, the sale or use of an airplane flight simulation training

device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) (For effective date, see note.) Reserved;

(91) The sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave;

(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales to an organization defined by the Internal Revenue Service as an instrumentality of the states relating to the holding of an annual meeting in this state;

(93)(A) For the period commencing January 1, 2012, until June 30, 2014, sales of tangible personal property used for and in the construction of a competitive project of regional significance.

(B) The exemption provided in subparagraph (A) of this paragraph shall apply to purchases made during the entire time of construction of the competitive project of regional significance so long as such project meets the definition of a "competitive project of regional significance" within the period commencing January 1, 2012, until June 30, 2014.

(C) The department shall not be required to pay interest on any refund claims filed for local sales and use taxes paid on purchases made prior to the implementation of this paragraph.

(D) As used in this paragraph, the term "competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in this state where the commissioner of economic development determines that the project would have a significant regional impact. The commissioner of economic development shall promulgate regulations in accordance with the provisions of this paragraph outlining the guidelines to be applied in making such determination;

(94) The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use; or

(95) (For effective date, see note.) The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. This exemption shall not apply to leases or rentals of motor vehicles or to those sales and use taxes collected pursuant to subsection (d) of Code Section 48-8-241. (Ga. L. 1951, p. 360, §§ 3, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 182, §§ 1, 2; Ga. L.

1953, Jan.-Feb. Sess., p. 191, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 192, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 194, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 199, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 301, § 1; Ga. L. 1960, p. 153, § 2; Ga. L. 1963, p. 13, § 1; Ga. L. 1963, p. 132, § 1; Ga. L. 1963, p. 613, § 1; Ga. L. 1964, p. 57, § 3; Ga. L. 1964, p. 206, § 1; Ga. L. 1964, p. 672, § 1; Ga. L. 1965, p. 13, § 1; Ga. L. 1966, p. 211, § 1; Ga. L. 1966, p. 507, § 1; Ga. L. 1966, p. 537, §§ 1, 2; Ga. L. 1967, p. 282, § 1; Ga. L. 1967, p. 283, § 1; Ga. L. 1967, p. 286, § 1; Ga. L. 1968, p. 129, § 1; Ga. L. 1968, p. 136, § 1; Ga. L. 1968, p. 201, § 1; Ga. L. 1968, p. 545, § 1; Ga. L. 1968, p. 559, § 1; Ga. L. 1970, p. 16, § 1; Ga. L. 1970, p. 252, § 2; Ga. L. 1970, p. 254, § 1; Ga. L. 1970, p. 460, § 1; Ga. L. 1970, p. 631, § 1; Ga. L. 1971, p. 80, § 1; Ga. L. 1971, p. 265, § 1; Ga. L. 1971, p. 474, § 1; Ga. L. 1971, p. 653, § 1; Ga. L. 1972, p. 457, § 1; Ga. L. 1972, p. 504, § 1; Ga. L. 1973, p. 276, § 1; Ga. L. 1976, p. 411, § 1; Ga. L. 1976, p. 672, § 1; Ga. L. 1976, p. 987, § 1; Ga. L. 1977, p. 590, § 1; Code 1933, § 91A-4503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1160, §§ 1-4; Ga. L. 1978, p. 1634, § 1; Ga. L. 1978, p. 1664, § 2; Ga. L. 1978, p. 1666, § 1; Ga. L. 1979, p. 5, §§ 85-92; Ga. L. 1979, p. 1278, §§ 1, 2; Ga. L. 1980, p. 10, §§ 25, 26; Ga. L. 1980, p. 586, § 1; Ga. L. 1980, p. 805, § 1; Ga. L. 1980, p. 1188, § 1; Ga. L. 1981, p. 1857, § 41; Ga. L. 1984, p. 1466, § 1; Ga. L. 1985, p. 491, § 1; Ga. L. 1985, p. 624, § 1; Ga. L. 1985, p. 625, § 1; Ga. L. 1985, p. 1177, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1464, § 2; Ga. L. 1986, p. 1467, §§ 1, 2; Ga. L. 1986, p. 1584, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 62, §§ 2, 3; Ga. L. 1989, p. 622, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 87, § 2; Ga. L. 1992, p. 1276, § 1; Ga. L. 1992, p. 1521, § 2; Ga. L. 1992, p. 3173, § 1; Ga. L. 1994, p. 132, § 1; Ga. L. 1994, p. 552, § 1; Ga. L. 1994, p. 928, §§ 5, 6; Ga. L. 1994, p. 1269, § 1; Ga. L. 1995, p. 364, § 1; Ga. L. 1995, p. 585, § 8; Ga. L. 1995, p. 991, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1996, p. 1, § 1; Ga. L. 1996, p. 220, §§ 8-10; Ga. L. 1996, p. 738, § 1; Ga. L. 1996, p. 1025, § 2; Ga. L. 1996, p. 1643, §§ 1-3; Ga. L. 1997, p. 157, § 1; Ga. L. 1997, p. 1295, § 1; Ga. L. 1997, p. 1412, §§ 1, 2; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 602, §§ 1-3; Ga. L. 1999, p. 634, §§ 1, 2; Ga. L. 2000, p. 409, § 1; Ga. L. 2000, p. 411, § 1; Ga. L. 2000, p. 414, § 1; Ga. L. 2000, p. 415, § 1; Ga. L. 2000, p. 468, § 1; Ga. L. 2000, p. 485, § 1; Ga. L. 2000, p. 615, §§ 1-3; Ga. L. 2000, p. 1202, §§ 1, 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 202, §§ 1, 2; Ga. L. 2001, p. 984, §§ 13-16; Ga. L. 2001, p. 1049, § 1; Ga. L. 2001, p. 1068, § 1; Ga. L. 2002, p. 6, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 575, § 1; Ga. L. 2002, p. 804, § 1; Ga. L. 2002, p. 855, § 1; Ga. L. 2002, p. 954, § 3; Ga. L. 2002, p. 984, § 1; Ga. L. 2003, p. 337, § 1; Ga. L. 2003, p. 665, §§ 11, 12; Ga. L. 2004, p. 154, § 1; Ga. L. 2004, p. 328, § 1; Ga. L. 2004, p. 403, § 1; Ga. L. 2004, p. 628, § 1; Ga. L. 2004, p. 690, § 22; Ga. L. 2004, p. 947, § 1; Ga. L. 2004, p. 1073, § 1; Ga. L. 2005, p. 60,

§ 48/HB 95; Ga. L. 2005, p. 142, §§ 1, 2/HB 487; Ga. L. 2005, p. 334, § 29-6/HB 501; Ga. L. 2005, p. 725, §§ 1, 2, 3, 4/HB 341; Ga. L. 2005, p. 794, § 1/HB 559; Ga. L. 2005, p. 983, § 1/HB 5; Ga. L. 2006, p. 222, § 1/HB 1014; Ga. L. 2006, p. 263, § 1/HB 1018; Ga. L. 2006, p. 419, § 1/HB 834; Ga. L. 2006, p. 471, § 1/HB 1301; Ga. L. 2006, p. 524, §§ 1, 2/HB 1219; Ga. L. 2006, p. 527, § 1/HB 1121; Ga. L. 2006, p. 538, § 1/HB 841; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2007, p. 207, §§ 1, 2/HB 128; Ga. L. 2007, p. 419, § 1/HB 186; Ga. L. 2007, p. 594, § 1/HB 169; Ga. L. 2007, p. 604, § 1/HB 282; Ga. L. 2007, p. 709, § 1/HB 193; Ga. L. 2008, p. 316, § 1/HB 1178; Ga. L. 2008, p. 340, §§ 1, 2/HB 948; Ga. L. 2008, p. 644, § 3-1/SB 342; Ga. L. 2008, p. 739, §§ 1, 2, 3/HB 957; Ga. L. 2008, p. 773, § 1/HB 1078; Ga. L. 2008, p. 1148, § 1/HB 1023; Ga. L. 2008, p. 1151, § 1/HB 1110; Ga. L. 2008, p. 1160, § 1/HB 237; Ga. L. 2008, p. 1163, § 1/HB 272; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 79, § 2/HB 59; Ga. L. 2009, p. 636, § 1/HB 116; Ga. L. 2009, p. 637, §§ 1, 2/HB 120; Ga. L. 2009, p. 642, § 1/HB 212; Ga. L. 2009, p. 650, § 1/HB 358; Ga. L. 2009, p. 651, § 1/HB 395; Ga. L. 2009, p. 777, § 1/HB 129; Ga. L. 2009, p. 794, § 1/HB 349; Ga. L. 2009, p. 795, § 1/HB 364; Ga. L. 2010, p. 662, § 2/HB 1221; Ga. L. 2011, p. 38, § 4/HB 168; Ga. L. 2011, p. 47, § 1/HB 322; Ga. L. 2011, p. 302, § 1/HB 234; Ga. L. 2012, p. 257, §§ 1-5, 4-1, 5-1, 5-5, 5-6, 6-2/HB 386; Ga. L. 2012, p. 580, § 18/HB 865; Ga. L. 2012, p. 694, § 4/HB 729; Ga. L. 2012, p. 775, § 48/HB 942; Ga. L. 2012, p. 1348, § 2/HB 743.)

Delayed effective date. — Paragraphs (25) through (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90), as set out above, become effective January 1, 2013. Until January 1, 2013, paragraphs (25) through (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90) read as follows: “(25) The sale of seed; fertilizers; insecticides; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller’s earth, straw, and hay; and feed for livestock, fish, or poultry when used either directly in tilling the soil or in animal, fish, or poultry husbandry;

“(26) The sale to persons engaged primarily in producing farm crops for sale of machinery and equipment which is used exclusively for irrigation of farm crops including, but not limited to, fruit, vegetable, and nut crops;

“(27) The sale of sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees

when the commissioner’s prior approval is obtained;

“(28) The sale of cattle, hogs, sheep, horses, poultry, or bees when sold for breeding purposes;

“(29) The sale of the following types of agricultural machinery:

“(A) Machinery and equipment for use on a farm in the production of poultry and eggs for sale;

“(B) Machinery and equipment used in the hatching and breeding of poultry and the breeding of livestock;

“(C) Machinery and equipment for use on a farm in the production, processing, and storage of fluid milk for sale;

“(D) Machinery and equipment for use on a farm in the production of livestock for sale;

“(E) Machinery and equipment which is used by a producer of poultry, eggs, fluid milk, or livestock for sale for the purpose of harvesting farm crops to be used on the farm by that producer as feed for poultry or livestock;

“(F) Machinery which is used directly

in tilling the soil or in animal husbandry when the machinery is incorporated for the first time into a new farm unit engaged in tilling the soil or in animal husbandry in this state;

“(G) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is incorporated as additional machinery for the first time into an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

“(H) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

“(I) Rubber-tired farm tractors and attachments to the tractors which are sold to persons engaged primarily in producing farm crops for sale and which are used exclusively in tilling, planting, cultivating, and harvesting farm crops, and equipment used exclusively in harvesting farm crops or in processing onion crops which are sold to persons engaged primarily in producing farm crops for sale. For the purposes of this subparagraph, the term ‘farm crops’ includes only those crops which are planted and harvested within a 12 month period; and

“(J) Pecan sprayers, pecan shakers, and other equipment used in harvesting pecans which is sold to persons engaged in the growing, harvesting, and production of pecans;

“(29.1) The sale or use of any off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers,

delimbers, chip harvestors, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, and motor graders and the related attachments;

“(34) The sale of the following types of manufacturing machinery:

“(A) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is bought to replace or upgrade machinery or equipment in a manufacturing plant presently existing in this state and machinery or equipment components which are purchased to upgrade machinery or equipment which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant;

“(B) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used for the first time in a new manufacturing plant located in this state;

“(C) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used as additional machinery or equipment for the first time in a manufacturing plant presently existing in this state; and

“(D) Any person making a sale of machinery or equipment for the purpose specified in subparagraph (B) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at the commissioner’s discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph;

“(34.3)(A) The sale or use of repair or replacement parts, machinery clothing or replacement machinery clothing, molds or

replacement molds, dies or replacement dies, waxes, and tooling or replacement tooling for machinery which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant presently existing in this state.

“(B) The commissioner shall promulgate rules and regulations to implement and administer this paragraph;

“(35)(A) The sale, use, storage, or consumption of:

“(i) Industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product;

“(ii) Industrial materials other than machinery and machinery repair parts that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion; or

“(iii) Materials, containers,* labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse;

“(B) As used in this paragraph, the term ‘industrial materials’ does not include natural or artificial gas, oil, gasoline, electricity, solid fuel, ice, or other materials used for heat, light, power, or refrigeration in any phase of the manufacturing, processing, or converting process;

“(37) The sale of machinery and equipment for use in combating air and water pollution and any industrial material bought for further processing in the manufacture of tangible personal property for sale or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process. Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect a tax imposed on the sale by this article unless the purchaser furnishes the person making the sale with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery, equipment, or industrial material without paying the tax;

“(49) Sales of liquefied petroleum gas or

other fuel used in a structure in which broilers, pullets, or other poultry are raised;

“(64) The sale of electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of crops;

“(77) Sales of liquefied petroleum gas or other fuel used in a structure in which plants, seedlings,*nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale;

“(79) The sale or use of ice for chilling poultry or vegetables in processing for market and for chilling poultry or vegetables in storage rooms, compartments, or delivery trucks;

“(90) The sale of electricity to a manufacturer located in this state used directly in the manufacture of a product if the direct cost of such electricity exceeds 50 percent of the cost of all materials, including electricity, used directly in the product; or”.

Paragraph (95), as set out above, becomes effective March 1, 2013. Until March 1, 2013, there is no paragraph (95).

The 2010 amendment, effective January 1, 2011, in paragraph (13), substituted “prepared food and food and food ingredients consumed by pupils” for “food to be consumed on the premises by pupils” near the beginning; deleted “dangerous” preceding “drugs” in division (47)(A)(i) and in two places in division (47)(A)(ii); in division (47)(B)(ii), substituted “Drug” for “Dangerous drug”, and substituted “Code Section 48-8-2” for “Code Section 16-13-1”; substituted “Reserved” for “The sale or use of hearing aids” in paragraph (52); rewrote paragraph (57); substituted “sales of food and food ingredients” for “sales of eligible food and beverages” in subparagraph (57.1)(A); deleted a colon following “term” at the end of subparagraph (57.1)(B); deleted division (57.1)(A)(i), which read: “Eligible food and beverages’ means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996, whether or not for off premises consumption.”; substituted

“qualified food bank” for “(ii) ‘Qualified food bank’”; deleted former subparagraph (57.1)(C), which read: “Any person making a sale of eligible food and beverages for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the eligible food and beverages without paying the tax.”; redesignated former subparagraph (57.1)(D) as present subparagraph (57.1)(C); substituted “food which is donated” for “food and beverages which are donated” in subparagraphs (57.2)(A) and (57.3)(A); deleted former subparagraph (57.2)(C), which read: “Any person making a donation of prepared food and beverages for the purpose specified in this paragraph shall remit the tax imposed thereon unless the person making use of such prepared food and beverages furnishes the person making the donation with an exemption determination letter issued by the commissioner certifying that the person making use of such food and beverages is entitled to use the prepared food and beverages without paying the tax.”; redesignated former subparagraph (57.2)(D) as present subparagraph (57.2)(C); deleted former subparagraph (59)(A), which read: “For purposes of this paragraph, ‘eligible food and beverages’ means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996, whether or not for off premises consumption.”; redesignated former subparagraphs (59)(B) and (59)(C) as present subparagraphs (59)(A) and (59)(B), and, in subparagraphs (59)(A) and (59)(B), substituted “food and food ingredients” for “eligible food and beverages”; substituted “use of all mobility enhancing equipment prescribed by a physician” for “use, to or by permanently disabled persons, of wheelchairs and any accompanying equipment, including seating equipment, all of which is manually or mechanically attached or adapted to such wheelchairs” in paragraph (72); in paragraph (81), substituted “food ingredients” for “beverages, except for alcoholic beverages,” and “food

ingredients” for “beverages” in the first sentence, and added the second and third sentences; substituted “paragraph” for “Code section” in subparagraph (87)(B); deleted “or” at the end of subparagraph (88)(D); substituted a semicolon for a period at the end of paragraph (89); and added paragraphs (90) and (91).

The 2011 amendments. — The first 2011 amendment, effective April 27, 2011, in paragraph (12), substituted “Food and food ingredients and prepared food” for “School lunches” at the beginning and added “as part of a school lunch program” at the end; in paragraph (18), inserted “except delivery charges by the seller associated with the sale of taxable tangible personal property,”; in division (47)(A)(i), deleted “controlled substances and” following “sale or use of”, substituted “dispensable only” for “dispensed”, substituted “the sale or use” for “sales”, and substituted “; and” for a period at the end; in division (47)(A)(ii), deleted “those controlled substances and” following “sale or use of”, substituted “drugs and durable medical equipment” for “controlled substances, drugs, new animal drugs, and medical devices”; in subparagraph (47)(B), deleted division (47)(B)(i), which read: “‘Controlled substance’ means the same as provided in Code Section 16-13-1.”; redesignated former divisions (47)(B)(ii) and (47)(B)(iii) as present divisions (47)(B)(i) and (47)(B)(ii), respectively; in division (47)(B)(i), added “but shall not include over-the-counter drugs or tobacco” at the end; deleted division (47)(B)(iv), which read: “‘Medical device’ means a device as defined in subsection (h) of 21 U.S.C. Section 321.”; deleted division (47)(B)(v), which read: “‘New animal drug’ means a new animal drug as defined in subsection (v) of 21 U.S.C. Section 321.”; in paragraph (50), deleted “blood measuring devices, other monitoring equipment, or insulin delivery systems used exclusively by diabetics and sales of insulin” following “Sales of”; substituted the present provisions of paragraph (52) for “Reserved”; in paragraph (54), inserted “that is sold or used pursuant to a prescription” and substituted “that is sold or used pursuant to a prescription” for “prescribed by a physician”; in subparagraph (57)(A), in-

serted “to an individual consumer for off-premises human consumption” and deleted “subparagraph (B) of” following “provided in”; in subparagraph (57)(B), inserted “the term”, inserted “as defined in Code Section 48-8-2”, and substituted “drugs, or over-the-counter drugs” for “alcoholic beverages, or tobacco as defined in Code Section 48-8-2”; added subparagraph (57)(C); and redesignated former subparagraphs (57)(C) and (57)(D) as present subparagraphs (57)(D) and (57)(E), respectively. The second 2011 amendment, effective July 1, 2011, redesignated former subparagraph (33.1)(B) as present division (33.1)(B)(i) and, in division (33.1)(B)(i), substituted the present provisions for the former provisions, which read: “The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from the first 1.80 percent of the 4 percent state sales and use tax imposed by this chapter and shall be subject to the remaining 2.20 percent of the 4 percent state sales and use tax imposed by this chapter.”; and added divisions (33.1)(B)(ii) and (33.1)(B)(iii); in subparagraph (33.1)(C), substituted “shall be exempt at all times” for “shall also be exempt”; inserted “and paragraph (2) of subsection (d) of Code Section 48-8-241” in subparagraphs (33.1)(E) and (33.1)(F); in subparagraph (33.1)(E), inserted a colon following “person which”, substituted “(i) Is” for “is”, added “; and” at the end, and added division (33.1)(E)(ii); and deleted former subparagraph (33.1)(H), which read: “The exemption provided for in this paragraph shall apply only as to transactions occurring on or after July 1, 2009, and prior to July 1, 2011;”. The third 2011 amendment, effective July 1, 2011, substituted “June 30, 2013” for “June 30, 2011” in paragraph (86).

The 2012 amendments. — The first 2012 amendment, effective April 19, 2012, substituted the present provisions of subparagraph (75)(A) for the former provisions, which read: “The sale of any covered item. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on July 30, 2009, and concluding at 12:00 Midnight on August 2, 2009.”; substituted “of \$1,000.00” for “\$1,500.00” in

the first sentence of division (75)(B)(ii); and substituted the present provisions of subparagraph (82)(A) for the former provisions, which read: “Purchase of energy efficient products or water efficient products with a sales price of \$1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on October 1, 2009, and concluding at 12:00 Midnight on October 4, 2009.”; effective July 1, 2012, added the last sentence in division (33.1)(B)(i); in division (33.1)(B)(ii), in the first sentence, deleted “and ending June 30, 2013,” following “July 1, 2012,” near the beginning, inserted “1 percent of the 4 percent” near the middle, and deleted “until the aggregate state sales and use tax liability of the taxpayer during such period with respect to jet fuel exceeds \$10 million, computed as if the exemption provided in this division was not in effect during such period” following “state sales and use tax” at the end, and deleted the former second sentence, which read: “Thereafter during such period, the sale or use of jet fuel to or by the qualifying airline shall be subject to state sales and use tax.”; deleted division (33.1)(B)(iii), which read: “The exemptions provided in divisions (i) and (ii) of this subparagraph shall not apply to any purchases of jet fuel occurring on or after July 1, 2013.”; added the second sentence in subparagraph (33.1)(C); substituted “any time” for “anytime” near the middle of subparagraph (33.1)(D); in subparagraph (33.1)(E), substituted “division (ii) of subparagraph (B) of this paragraph” for “this paragraph” near the beginning, substituted “which is authorized” for “which: (i) Is authorized” near the middle, and substituted a period for “; and” at the end; deleted division (33.1)(E)(ii), which read: “For the 12 month period immediately preceding the applicable period specified in division (i) or (ii) of subparagraph (B) of this paragraph had, or would have had in the absence of any exemption during such 12 month period, state sales and use tax liability on jet fuel of more than \$15 million.”; substituted the present provisions of subparagraph (33.1)(F) for the former

provisions, which read: "For purposes of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a 'qualifying airport' shall mean any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year."; substituted a semicolon for a period at the end of subparagraph (33.1)(G); reserved paragraph (73); deleted "or" at the end of paragraph (90); substituted "; or" for a period at the end of paragraph (91); and added paragraph (92) (now (93)); effective March 1, 2013, substituted a semicolon for "; or" at the end of paragraph (90); substituted "; or" for a period at the end of paragraph (91); added paragraph (92) (now (95)); and effective January 1, 2013, reserved paragraphs (25) through (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90). The second 2012 amendment, effective July 1, 2012, in division (5)(B)(ii), substituted "Department of Public Safety" for "Public Service Commission" three times and deleted "common" following "or a motor" near the beginning. The third 2012 amendment, effective May 1, 2012, inserted "the sale or use of insulin regardless of whether the insulin is dispensable only by prescription," in division (47)(A)(i); deleted "or" at the end of paragraph (90); substituted "; or" for a period at the end of paragraph (91); and added paragraph (92). The fourth 2012 amendment, effective May 2, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (33.1)(G), and designated paragraph (58) as reserved. The fifth 2012 amendment, effective July 1, 2012, added the last sentence to subparagraph (33.1)(C), and added paragraph (92). See the Code Commission notes regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "May 5, 2004" was substituted for "the effective date of this paragraph" in paragraph (78), "May 17, 2004" was substituted for "the effective date of this paragraph" in subparagraph (80)(A), and "May 17, 2004," was substituted for "the effective date of this paragraph" in subparagraph (80)(B).

Pursuant to Code Section 28-9-3, in 2012, the amendment of subparagraph (33.1)(C) of this Code section by Ga. L.

2012, p. 257, § 5-6/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 1348, § 2/HB 743, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2012, "Code Section 48-5C-1" was substituted for "Code Section 48-5B-1" in paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, punctuation changes were made at the end of paragraphs (91) through (93), "; or" was substituted for a period at the end of paragraph (94), and a period was substituted for a semicolon at the end of paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, paragraph (92), as enacted by Ga. L. 2012, p. 257, § 5-5/HB 386, was redesignated as paragraph (93); paragraph (92), as enacted by Ga. L. 2012, p. 1348, § 2/HB 743, was redesignated as paragraph (94); and paragraph (92), as enacted by Ga. L. 2012, p. 257, § 1-5/HB 386, was redesignated as paragraph (95).

Editor's notes. — Former paragraph (85) was repealed on its own terms effective July 1, 2010.

Former paragraph (58) was repealed on its own terms effective January 1, 2011, and was reserved by Ga. L. 2012, p. 775, § 48/HB 942.

Ga. L. 2011, p. 302, § 3, not codified by the General Assembly, provides for severability.

Ga. L. 2012, p. 257, § 7-1(b)/HB 386, approved by the Governor April 19, 2012, provided that the effective date of the amendment to this Code section is January 1, 2012. See Op. Atty. Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not

codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-3.2. (Effective January 1, 2013) Definitions; exemption; applicability; examples.

(a) As used in this Code section, the term:

(1) "Consumable supplies" means tangible personal property, other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.

(2) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) "Equipment" means tangible personal property, other than machinery, industrial materials, and consumable supplies. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. Examples of equipment include, but are not limited to, machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term excludes real property.

(4) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(5) "Industrial materials" means materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term includes raw materials.

(6) "Local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; and by or pursuant to any article of this chapter.

(7) "Machinery" means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term includes a machine and all of its components, including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine, including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality. The term includes repair or replacement parts. The term excludes real property and consumable supplies.

(8) "Machinery clothing" means felts, screen plates, wires, or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(9) "Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a

continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(10) "Manufacturer" means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or

(B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(11) "Manufacturing plant" means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(12) "Packaging operation" means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(13) "Packaging supplies" means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.

(14) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(15) "Repair or replacement part" means a part for any machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic

fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(16) "Substantial purpose" means the purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria, including, but not limited to, the number of items produced.

(b) The sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.

(c)(1) Except as otherwise provided in paragraph (4) of this subsection, the sale, use, storage, or consumption of energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution and except for local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment. This exemption shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 25 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 25 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 50 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 50 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 75 percent of the total amount of state sales and use tax that would be

collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 75 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy; and

(D) On or after January 1, 2016, such sale, use, storage, or consumption of energy shall be fully exempt from such sales and use taxation.

(2)(A) Any person making a sale of items qualifying for exemption under paragraph (1) of this subsection shall be relieved of the burden of proving such qualification if the person making the sale receives a certificate from the purchaser certifying that the purchase is exempt under this subsection.

(B) Any person who qualifies for the exemption under paragraph (1) of this subsection shall notify and certify to the person making the qualified sale that such exemption is applicable to the sale.

(3) With respect to services which are regularly billed on a monthly basis, the exemption under paragraph (1) of this subsection shall become effective with respect to and the exemption shall apply to services billed on or after January 1, 2013.

(4) If a competitive project of regional significance under paragraph (93) of Code Section 48-8-3 is started in a county or municipality, it shall not be subject to the phase-in period contained in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, but such project shall receive the full exemption provided for in subparagraph (D) of paragraph (1) of this subsection notwithstanding the January 1, 2016, limitation in that subparagraph.

(d) The exemptions under this Code section shall be applied as follows:

(1) The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants;

(2) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The commissioner shall consider any reasonable methodology for measuring the substantial

purpose of machinery or equipment for which the substantial purpose is not readily identifiable;

(3) For leased machinery or equipment that did not qualify for an exemption at the date of lease inception and subsequently qualifies for the exemption under this Code section, the exemption shall apply to all lease payments made subsequent to such qualification;

(4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

(5) Energy necessary and integral to the manufacture of tangible personal property includes energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, or to perform an actual part of the manufacture of tangible personal property; energy used in administrative or other ancillary activities that are located and performed at the manufacturing plant so long as such activities primarily benefit such manufacture of tangible personal property; energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the manufacturer's employees at the manufacturing plant; and energy used for any other purpose at a manufacturing plant.

(e) Examples that qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

(1) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(3) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property.

Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(4) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;

(6) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(7) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;

(8) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(10) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(11) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and

(12) Energy used at a manufacturing plant. (Code 1981, § 48-8-3.2, enacted by Ga. L. 2012, p. 257, § 5-2/HB 386.)

Effective date. — This Code section becomes effective January 1, 2013. See editor's note for exception.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "or after January 1, 2013" was substituted for "or

after the effective date of this Code section" at the end of paragraph (c)(3) and "paragraph (93)" was substituted for "paragraph (92)" in paragraph (c)(4).

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(a)/HB 386, not codified by the Gen-

eral Assembly, provides that paragraph (c)(4) of this Code section becomes effective April 19, 2012.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-8-3.3. (Effective January 1, 2013. See note.) Definitions; applicability; criteria for eligibility; rules and regulations.

(a) As used in this Code section, the term:

(1)(A) "Agricultural machinery and equipment" means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time or as additional machinery for the first time into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in this state; directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state; machinery and equipment used exclusively for irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut crops; and machinery and equipment used to cool agricultural products in storage facilities.

(B) "Agricultural machinery and equipment" also means farm tractors and attachments to the tractors; off-road vehicles used primarily in the production of nursery and horticultural crops; self-propelled fertilizer or chemical application equipment sold to

persons engaged primarily in producing agricultural products for sale and which are used exclusively in tilling, planting, cultivating, and harvesting agricultural products, including, but not limited to, growing, harvesting, or processing onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops; devices and containers used in the transport and shipment of agricultural products; aircraft exclusively used for spraying agricultural crops; pecan sprayers, pecan shakers, and other equipment used in harvesting pecans sold to persons engaged in the growing, harvesting, and production of pecans; and off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimiters, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments; grain bins and attachments to grain bins; any repair, replacement, or component parts installed on agricultural machinery and equipment; trailers used to transport agricultural products; all-terrain vehicles and multipassenger rough-terrain vehicles; and any other off-road vehicles used directly and principally in the production of agricultural or horticultural products.

(2) "Agricultural operations" or "agricultural products" means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, Christmas trees, fowl, equine, or animals; or the production of aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products. Agricultural products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.

(3) "Agricultural production inputs" means seed; seedlings; plants grown from seed, cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and instruments used for the administra-

tion of such drugs; fencing products and materials used to produce agricultural products; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes; ice or other refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia, and propylene glycol used in the processing for market or the chilling of agricultural products in storage facilities, rooms, compartments, or delivery trucks; materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; and containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.

(4) "Energy used in agriculture" means fuels used for agricultural purposes, including, but not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood products, or wood by-products; liquefied petroleum gas or other fuel used in structures in which broilers, pullets, or other poultry are raised, in which swine are raised, in which dairy animals are raised or milked or where dairy products are stored on a farm, in which agricultural products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale; electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of agricultural products; and electricity or other fuel used in the drying, cooking, or further processing of raw agricultural products, including, but not limited to, food processing of raw agricultural products.

(5) "Qualified agriculture producer" includes producers of agricultural products who meet one of the following criteria:

(A) The person or entity is the owner or lessee of agricultural land or other real property from which \$2,500.00 or more of agricultural products were produced and sold during the year, including payments from government sources;

(B) The person or entity is in the business of providing for-hire custom agricultural services, including, but not limited to, plowing, planting, harvesting, growing, animal husbandry or the maintenance of livestock, raising or substantially modifying agricultural

products, or the maintenance of agricultural land from which \$2,500.00 or more of such services were provided during the year;

(C) The person or entity is the owner of land that qualifies for taxation under the qualifications of bona fide conservation use property as defined in Code Section 48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land Protection Act as defined in Code Section 48-5-7.7;

(D) The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term agricultural products will be produced which have the capacity to generate at least \$2,500.00 in sales annually in the future; or

(E) The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate at least \$2,500.00 in sales annually.

(b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.

(c) The Commissioner of Agriculture, at his or her discretion, may use one or both of the following criteria as a tool to determine eligibility under this Code section:

(1) Business activity on IRS schedule F (Profit or Loss from Farming); or

(2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss).

(d) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture to request an agricultural sales and use tax exemption certificate that contains an exemption number. To facilitate the use of the exemption certificate, a wallet-sized card containing that same information shall also be issued by the Commissioner of Agriculture.

(e) The Commissioner of Agriculture is authorized to promulgate rules and regulations governing the issuance of agricultural exemption certificates and the administration of this Code section. The Commis-

sioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge annual fees of not less than \$15.00 nor more than \$25.00 per year in accordance with Code Section 2-1-5, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering this Code section. (Code 1981, § 48-8-3.3, enacted by Ga. L. 2012, p. 257, § 5-3/HB 386.)

Effective date. — This Code section becomes effective January 1, 2013.

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-8-6. Prohibition of political subdivisions from imposing various taxes; ceiling on local sales and use taxes; taxation of mobile telecommunications.

(a) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply:

(A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as

defined under paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200. The exception provided for under this subparagraph shall apply only during the period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for under this subparagraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter; or

(B) In a county in which the tax levied for purposes of a metropolitan area system of public transportation is first levied after January 1, 2010, and before November 1, 2012. Such tax shall not apply to the following:

(i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For purposes of this division, a "qualifying airline" means any person which is authorized by the Federal Aviation Administration or another appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. For purposes of this division, a "qualifying airport" means any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year; and

(ii) The sale of motor vehicles;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter; and

(5) A sales and use tax levied under Article 5 of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(b) Reserved.

(c) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to:

- (1) Reserved; and
- (2) The sale of motor vehicles.

(c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee. (Ga. L. 1951, p. 360, § 25; Ga. L. 1965, p. 451, § 3; Ga. L. 1971, p. 85, § 1A; Ga. L. 1971, p. 95, § 1; Ga. L. 1975, p. 984, § 1; Ga. L. 1975, p. 1002, § 6; Ga. L. 1977, p. 744, § 5; Code 1933, § 91A-4534, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1985, p. 232, § 3; Ga. L. 2002, p. 576, § 1; Ga. L. 2002, p. 970, § 1; Ga. L. 2003, p. 665, § 13; Ga. L. 2004, p. 69, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 662, § 3/HB 1221; Ga. L. 2010, p. 778, § 5/HB 277; Ga. L. 2010, p. 813, § 1/HB 1393; Ga. L. 2010, p. 878, § 48/HB 1387.)

The 2010 amendments. — The first 2010 amendment, effective January 1, 2011, deleted former subsection (a), which read: "Except as otherwise authorized by the General Assembly, no county, municipality, school district, or other political subdivision of this state shall impose, levy, or collect a gross receipts tax, sales tax, use tax, or tax on amusement admission or services included in this article."; and redesignated former subsection (b) as present subsection (a). The second 2010 amendment, effective June 2, 2010, substituted a colon for "in" at the end of the introductory paragraph of subsection (b); added the subparagraph (b)(2)(A) designation; in subparagraph (b)(2)(A), substituted "paragraph (4)" for "paragraph (3)" twice in the first sentence, and substituted "subparagraph" for "paragraph" in the last two sentences; added subparagraph (b)(2)(B); deleted "and" from the end

of paragraph (b)(3); added "; and" at the end of paragraph (b)(4); and added paragraph (b)(5). The third 2010 amendment, effective June 3, 2010, made identical changes in paragraph (b)(2) and subparagraphs (b)(2)(A) and (b)(2)(B) as the second 2010 amendment. The fourth 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (4)" for "paragraph (3)" twice in the first sentence of paragraph (b)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, subsection (b) was set out as reserved and "paragraph (2) of subsection (a)" was substituted for "paragraph (2) of subsection (b)" in the introductory language of subsection (c) and in subsection (c.1).

Editor's notes. — Ga. L. 2010, p. 778, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the "Transportation Investment Act of 2010."

48-8-14. Restrictions on state contracts with nongovernmental vendors filing or refusing to collect sales or use taxes.

(a) As used in this Code section, the term "state agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. The term "state agency" shall not include any county, municipality, or local or regional governmental authority.

(b) On or after April 12, 2005, the Department of Administrative Services and any other state agency shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding \$100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under this chapter on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental vendor awarded the contract, the name of the vendor's affiliate, and the certificate of registration number as provided for under Code Section 48-8-59 for the vendor and affiliate of the vendor.

(f) The commissioner is specifically authorized to promulgate regulations to implement this Code section. (Code 1981, § 48-8-14, enacted by Ga. L. 2005, p. 159, § 22/HB 488; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2010, p. 662, § 4/HB 1221.)

The 2010 amendment, effective January 1, 2011, deleted "paragraph (3) of" preceding "Code Section" in subsection (b).

48-8-17. Collection of taxes on gasoline and aviation fuel; temporary suspension.

(a) The General Assembly finds that:

(1) Motor fuels and aviation gasoline are essential commodities used by Georgians for transportation;

(2) The price of gasoline has increased dramatically since the adjournment of the 2011 General Assembly;

(3) The increases in the cost of gasoline and other motor fuels have and will continue to impose significant financial burdens on all Georgians and Georgia's businesses;

(4) This inflated cost can prevent Georgians from spending on other necessary goods and business expansion; and

(5) The significant increase in motor fuel prices will result in a windfall to the state in the form of surplus state taxes on these commodities.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated June 23, 2011, and filed in the official records of the office of the Governor as Executive Order 06.23.11.03 which suspended commencing on June 23, 2011, the collection of any rate of prepaid state taxes as defined in Code Section 48-8-2 to the extent it differs from the rate levied as of May 1, 2011, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2. The period of suspension under this subsection shall conclude at the last moment of September 20, 2011.

(c) For the time period commencing on September 21, 2011, and concluding at the last moment of December 31, 2011, there shall be an exemption of prepaid state taxes as defined in Code Section 48-8-2 in an amount equal to the amount by which the actual rate levied during such time period exceeds the rate levied as of May 1, 2011, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2.

(d) For the time period commencing on June 23, 2011, and concluding on December 31, 2011, the collection of any rate of prepaid state taxes as defined in Code Section 48-8-2 to the extent it differs from the rate levied as of May 1, 2011, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2 shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-9-14 or any other law to the contrary.

(e) The ratification of the temporary suspension of collection of prepaid state tax and the temporary prepaid state tax exemption

provided for in this Code section shall not apply to prepaid local taxes as defined in Code Section 48-8-2.

(f) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-17, enacted by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX.)

Effective date. — This Code section became effective September 21, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, “September 20, 2011” was substituted for “the day immediately preceding the effective date of this Code section” in the last sentence of subsection (b); and “September 21, 2011,” was substituted for “the effective date of this subsection” near the beginning of subsection (c).

Editor’s notes. — This Code section formerly pertained to the ratification of Executive Order 06.02.08.01 which provided for a temporary prepaid state tax exemption. The former Code section was

based on Code 1981, § 48-8-17, enacted by Ga. L. 2009, p. 84, § 1/HB 121; Ga. L. 2010, p. 662, § 5/HB 1221 and was repealed by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX, effective September 21, 2011.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-17.1. Ratification of Executive Order on prepaid taxes; suspension of provisions.

Repealed by Ga. L. 2011, Ex. Sess., p. 258, § 2/HB 2EX, effective September 21, 2011.

Editor’s notes. — This Code section was based on Code 1981, § 48-8-17.1, en-

acted by Ga. L. 2009, p. 84, § 2/HB 121; Ga. L. 2010, p. 662, § 6/HB 1221.

PART 2

IMPOSITION, RATE, COLLECTION, AND ASSESSMENT

48-8-30. Imposition of tax; rates; collection.

(a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.

(b)(1) Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person making a sale or sales of tangible personal property at retail in this state

shall be a retailer and a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail.

(c)(1) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price, except as provided in paragraph (2) of this subsection.

(2) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state and used outside this state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price or fair market value of the property, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1) Every purchaser of tangible personal property at retail outside this state from a dealer, as defined in Code Section 48-8-2, when such property is to be used, consumed, distributed, or stored within this state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored within this state if that property is delivered in this state to the purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person who is a dealer, as defined in Code Section 48-8-2 and who makes any sale of tangible personal property at retail outside this state which property is to be delivered in this state to a purchaser or purchaser's agent shall be a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale at the rate of 4 percent of such sales price or the amount of tax as collected by that person from purchasers having their purchases delivered in this state, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this

subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price. The tax shall be paid to the person who leases or rents the property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum 4 percent of the fair market value of the tangible personal property at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the rate of 4 percent of the sales price paid to the person who leased or rented the property, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for a tax at the rate of 4 percent of the sales price paid for that lease or rental if that person is a dealer, as defined in Code Section 48-8-2 and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee

or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in Code Section 48-8-2 and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease or rental at the rate of 4 percent of the sales price from such leases or rentals or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent of the sales price made for the purchase. The tax shall be paid by the person purchasing or receiving the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(3)(A) Assessments of the state sales and use tax under this article on the charges described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall accrue commencing on July 1, 2011; provided, however, that collection of such state sales and use tax upon such charges shall not commence until the commissioner of community health has provided written notification to the state revenue commissioner that until such time as the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services has approved the state plan amendments described in subsection (b) of Code Section

31-8-152.1. In the event that such approval is not obtained or is reversed, or that the federal financial participation is not available with respect to revenues derived from such state sales and use tax, all accrued amounts of such tax shall lapse, and the charges described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall not constitute sales for purposes of this article.

(B)(i) The charges for services described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall be subject to state sales and use tax only and shall in no event be subject to any local sales and use tax.

(ii) For purposes of this subparagraph, the term “local sales and use tax” means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; or by or pursuant to any article of this chapter other than Article 1 of this chapter.

(C) This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the sales price of

retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph (b)(2)(B) of Code Section 48-9-14. (Ga. L. 1951, p. 360, § 2; Ga. L. 1960, p. 153, § 1; Ga. L. 1967, p. 284, § 1; Code 1933, § 91A-4502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 24; Ga. L. 1989, p. 62, § 5; Ga. L. 1990, p. 1243, §§ 2-4; Ga. L. 1992, p. 6, § 48; Ga. L. 1996, p. 1635, § 1; Ga. L. 1998, p. 602, § 4; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 17; Ga. L. 2007, p. 309, § 2/HB 219; Ga. L. 2010, p. 662, § 7/HB 1221; Ga. L. 2011, p. 674, § 1-4/HB 117.)

The 2010 amendment, effective January 1, 2011, substituted “4 percent of the sales price” for “4 percent of the gross sale or gross sales” in the last sentence of paragraph (b)(1); substituted “purchase price” for “cost price” near the end of paragraphs (c)(1) and (c)(2); in paragraph (c.1)(1), deleted “subparagraph (H) of paragraph (3) of” preceding “Code Section 48-8-2” in the first and last sentences, and

substituted “sales price” for “gross sales” near the end of the last sentence; in paragraph (d)(1), substituted “sales price” for “gross lease or rental charge” in the first and last sentences; substituted “sales price” for “rental charge” in subsection (e) and in the first sentence of paragraph (e.1)(1); in paragraph (e.1)(1), deleted “subparagraph (H) of paragraph (3) of” preceding “Code Section 48-8-2” in the

first and last sentences, and substituted "sales price" for "gross proceeds" in the last sentence; in paragraph (f)(1), substituted "sales price" for "gross charge or charges" in the first and last sentences; and substituted "sales price" for "gross proceeds" in the second sentence of subsection (h).

The 2011 amendment, effective July 1, 2011, added paragraph (f)(3).

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Standing to claim tax refund.

Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the General Refund Statute, O.C.G.A. § 48-2-35, because the bank was not a taxpayer entitled to a refund under O.C.G.A. § 48-2-35 since the bank was simply a third-party lender that con-

tracted to advance the money for the consumer, and ultimately the merchant, to meet their merchant's obligations to pay the sales tax; the bank's recourse was against the consumer who defaulted on the debt or possibly through any provisions in the credit card program contracts assigning responsibility for bad debts among the various parties. Citibank (S.D.), N. A. v. Graham, No. A11A2211, 2012 Ga. App. LEXIS 330 (Mar. 23, 2012).

48-8-31. Tax computation to be carried to third decimal place; rounding.

Tax computation must be carried to the third decimal place, and the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. (Ga. L. 1951, p. 360, § 22; Code 1933, § 91A-4531, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 40; Ga. L. 2010, p. 662, § 8/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted the present provisions of this Code section for the former provisions, which read: "Except as otherwise provided in Code Section 48-8-30, the

commissioner may prepare suitable brackets of prices for the collection of the tax imposed by this article. The use of tokens is prohibited."

48-8-32. Tax collectable from dealers; rate for retail sales price and purchase price.

The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the purchase price at the time of purchase, as the case may be, shall be collectable from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for

use or consumption in this state of tangible personal property. (Ga. L. 1951, p. 360, § 4; Code 1933, § 91A-4504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 62, § 6; Ga. L. 2010, p. 662, § 9/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “purchase price” for “cost price” near the middle of this Code section.

48-8-34. Collection of tax from purchaser by dealer at time of sale; payment of tax on imports; use, consumption, distribution, or storage equivalent to sale at retail; no duplication of tax.

JUDICIAL DECISIONS

Cited in Citibank (S.D.), N. A. v. Graham, No. A11A2211, 2012 Ga. App. LEXIS 330 (Mar. 23, 2012).

48-8-35. Addition of tax by dealer to sale price or charge; amount of tax as debt owed by purchaser to dealer; liability of dealer for failure to collect.

JUDICIAL DECISIONS

Cited in Citibank (S.D.), N. A. v. Graham, No. A11A2211, 2012 Ga. App. LEXIS 330 (Mar. 23, 2012).

48-8-36. Prohibition of advertising by dealer of assumption of payment of tax; exception; liability of dealer.

No person engaged in making retail sales shall advertise or represent to the public in any manner directly or indirectly that he or she will absorb all or any part of the tax or that he or she will relieve the purchaser of the payment of all or any part of the tax imposed by this article unless:

- (1) The retailer includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on behalf of the purchaser by the retailer; and
- (2) The retailer furnishes the purchaser with written evidence that the retailer will be liable for and pay any tax the purchaser was relieved from paying under this Code section.

If a retailer advertises that any portion of the tax not paid by the purchaser will be remitted on the purchaser's behalf by the retailer, the retailer shall be solely liable for and shall pay that portion of the tax. If a dealer or retailer complies with the provisions of this Code section and pays the absorbed tax over to the commissioner as provided by law, the

dealer or retailer shall be deemed to have complied with the provisions of this article requiring collection of the tax from the purchaser or consumer. (Ga. L. 1951, p. 360, § 12; Ga. L. 1960, p. 153, § 5; Code 1933, § 91A-4514, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 954, § 1/SB 332.)

The 2012 amendment, effective July 1, 2012, in the introductory language, twice inserted "or she" and substituted "unless:" for a period at the end; and added paragraphs (1), (2), and the ending undesignated paragraph.

48-8-38. Burden of proof on seller as to taxability; certificate that property purchased for resale; requirements of purchaser having certificate; contents; form for electronic claim of exemption; proof of claimed exemption; relief of seller from applicable tax.

(a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless such person takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise exempt.

(b) The certificate relieves the seller from the burden of proof as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate.

(c) The certificate shall include such information as is determined by the commissioner and is signed by the purchaser if it is a paper exemption certificate.

(d) A purchaser claiming an exemption electronically shall use the standard form as adopted by the Streamlined Sales Tax Governing Board.

(e) A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(f) The department shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate approved by the Streamlined Sales Tax Governing Board, the department, or the Multistate Tax Commission or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale. If the seller has not obtained a fully completed exemption certificate or all relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale, the department shall provide the seller with 120 days subsequent to a request for substantiation to either:

(1) Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that:

(A) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(B) Could be applicable to the item being purchased; and

(C) Is reasonable for the purchaser's type of business; or

(2) Obtain other information establishing that the transaction was not subject to the tax.

(g) The department shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. (Ga. L. 1951, p. 360, §§ 5-7; Code 1933, § 91A-4507, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 94; Ga. L. 2010, p. 662, § 10/HB 1221; Ga. L. 2011, p. 38, § 5/HB 168.)

The 2010 amendment, effective January 1, 2011, rewrote this Code section. 27, 2011, substituted "such person" for "he" in the second sentence of subsection

The 2011 amendment, effective April (a) and added subsections (d) through (g).

48-8-39. Effect of use other than retention, demonstration, or display by giver of certificate or by processor, manufacturer, or converter.

(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the purchase price of the property to him shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in his gross receipts either the amount of the rental charged or the total amount of the charges made by him for the transportation rather than the cost of the property to him.

(b)(1)(A) If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time

shall be deemed the sales price of the article, except as otherwise provided in subparagraph (B) of this paragraph.

(B)(i) As used in this subparagraph, the term “total raw material cost” means the manufactured cost of carpet samples; supplies used in the manufacturing of carpet samples such as binding, grommets, and similar items; carpet sample display devices such as racks, binders, and similar items; and inbound freight charges. Such term does not mean or include labor or overhead for assembling or producing samples from finished carpet and does not mean or include outbound freight charges which may be charged to the expense account for carpet samples.

(ii) For purposes of subparagraph (A) of this paragraph, the fair market value of any carpet sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of carpet that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample.

(2) If the sole use of the article other than retaining, demonstrating, or displaying it for sale is the rental of the article while holding it for sale, the processor, manufacturer, or converter may elect to treat the amount of the rental charged rather than the fair market value of the article as its sales price. (Ga. L. 1951, p. 360, § 8; Ga. L. 1968, p. 496, § 1; Ga. L. 1970, p. 595, § 1; Code 1933, § 91A-4508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 385, § 1; Ga. L. 2006, p. 470, § 1/HB 1040; Ga. L. 2010, p. 662, § 11/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “purchase price” for “cost price” near the end of the first sentence of subsection (a).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of

Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-42. Credit for tax when like tax paid in another state; procedure; proof of payment; payment of difference when like tax less than tax imposed by article; no credit absent reciprocity; exception.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-45. Reporting cash and credit sales; change of basis of accounting; payment of tax at time of filing return under cash basis of accounting; deduction of bad debts under accrual basis of accounting; availability of refund; bad debt deduction or refund nonassignable; allocation of bad debts.

(a) Any dealer taxable under this article having both cash and credit sales may report the sales on either the cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

(b) Any dealer reporting on a cash basis of accounting shall include in each return all cash sales made during the period covered by the return and all collections made in any period on credit sales of prior periods and shall pay the tax on the sales at the time of filing the return.

(c) Any dealer reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner. Any deduction taken or refund claimed that is attributed to bad debts shall not accrue or include interest.

(d) The bad debt may be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. Any such deduction for such bad debt shall be reported as a separate line item on the claimant's sales and use tax return. If such deduction is not reported as a line item, it shall be disallowed. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and the claimant would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(e) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and, secondly, to interest, service charges, and any other charges.

(f)(1) As used in this subsection, “assignee” includes but is not limited to:

(A) Assignees of promissory notes, accounts, or accounts receivable; or

(B) Financial institutions that do not make taxable retail sales but that finance retail sales by making loans or issuing credit cards to purchasers.

(2) The deduction and refund provided for in this Code section are not assignable. The deduction and refund provided for in this Code section are only available to a dealer that makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt with respect to that sale. Assignees may not take a deduction or claim a refund pursuant to this Code section.

(g) For purposes of calculating the deduction taken or refund claimed, a “bad debt” shall have the same meaning as defined in 26 U.S.C. Section 166. However, the amount calculated pursuant to 26 U.S.C. Section 166 shall be adjusted to exclude:

(1) Financing charges or interest;

(2) Sales or use taxes charged on the purchase price;

(3) Uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid;

(4) Expenses incurred in attempting to collect any debt; and

(5) Repossessed property.

(h) For bad debts incurred and written off after January 1, 2011, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed. The statute of limitations for filing such claim shall be three years from the due date of the return on which the bad debt could first be claimed. Such refund shall be claimed on such form as shall be established by the commissioner.

(i) Where filing responsibilities have been assumed by a certified service provider, the department allows the service provider to claim, on behalf of the seller, any bad debt allowance provided by this Code section. Such refund shall be claimed on such form as shall be established by the commissioner. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(j) Where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the Streamlined Sales Tax member states, such allocation is permitted. (Ga. L.

1951, p. 360, § 14; Code 1933, § 91A-4518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1998, p. 604, § 1; Ga. L. 2008, p. 340, § 3/HB 948; Ga. L. 2010, p. 662, § 12/HB 1221; Ga. L. 2011, p. 38, § 6/HB 168.)

The 2010 amendment, effective January 1, 2011, deleted “on the same basis that bad debts are allowed as a deduction on state income tax returns” following “commissioner” at the end of subsection (c); and deleted “on the same basis that private label credit card bad debts are allowed as a deduction on state income tax returns” following “commissioner” at the end of the first sentence of subsection (d).

The 2011 amendment, effective April 27, 2011, substituted “dealer” for “person” throughout; added the second sentence in subsection (c); substituted the present provisions of subsection (d) for the former

provisions, which read: “An assignee of private label credit card debt purchased directly from a dealer without recourse or a credit card bank which extends such credit to customers under a private label credit card program shall be allowed a deduction for private label credit card bad debts under rules and regulations of the commissioner. An issuer or assignee of private label credit card debt may claim its deduction for private label credit card bad debts on a return filed by a member of an affiliated group as defined under 26 U.S.C. Section 1504.”; and added subsections (e) through (j).

JUDICIAL DECISIONS

Only potential tax relief afforded by statute is deduction. — Trial court did not err in dismissing a bank’s complaint alleging that the bank was entitled to a refund for sales tax paid under the Bad Debt Statute, O.C.G.A. § 48-8-45, because the only potential tax relief af-

forded by O.C.G.A. § 48-8-45(c) was a deduction; in drafting the Bad Debt Statute, the General Assembly chose to grant only a deduction for bad credit card debt. Citibank (S.D.), N. A. v. Graham, No. A11A2211, 2012 Ga. App. LEXIS 330 (Mar. 23, 2012).

48-8-49. Dealers’ returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns to the commissioner showing the gross sales and purchases arising from all sales and purchases taxable under this article during the preceding calendar month. The commissioner may provide by regulation for quarterly or annual returns or, upon application, may permit a dealer to file a return on a quarterly or annual basis if deemed advisable by the commissioner. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the commissioner.

(b)(1) As used in this subsection, the term “estimated tax liability” means a dealer’s tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer’s average monthly payments for the last calendar year.

(2) If the tax liability of a dealer in the preceding calendar year was greater than \$60,000.00 excluding local sales taxes, the dealer

shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14.

(c) Rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect to the sales price in accordance with the rules and regulations prescribed by the commissioner.

(d)(1) The commissioner, in his discretion, may grant extensions, upon written application, to the end of the calendar month in which any tax return is due under this Code section.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing and only for a period of not more than 12 consecutive months.

(3) Upon the grant of any extension authorized by this subsection, the taxpayer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which, when added to the amount previously remitted for the period pursuant to subsection (b) of this Code section, equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged, assessed, or collected by reason of the granting of an extension pursuant to this subsection.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980. (Ga. L. 1951, p. 360, § 16; Ga. L. 1952, p. 334, § 1; Ga. L. 1960, p. 153, § 7; Ga. L. 1972, p. 8, § 1; Code 1933, § 91A-4521, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 27; Ga. L. 1989, p. 62, § 8; Ga. L. 1990, p. 1243, § 5; Ga. L. 1996, p. 780, § 3; Ga. L. 2003, p. 355, § 4; Ga. L. 2003, p. 665, § 14; Ga. L. 2006, p. 530, § 1/HB 1120; Ga. L. 2010, p. 662, § 13/HB 1221; Ga. L. 2011, p. 38, § 7/HB 168.)

The 2010 amendment, effective January 1, 2011, in paragraph (b)(2), in the first sentence, substituted "If the tax liability of a dealer in the preceding calendar year was greater than \$30,000.00 excluding local sales taxes" for "If the estimated tax liability of a dealer for any taxable period exceeds \$5,000.00", in the third sentence, deleted "to any dealer unless

during the previous fiscal year the dealer's monthly payments exceeded \$5,000.00 per month for three consecutive months or more nor shall this subsection apply" following "This subsection shall not apply", and deleted the former last sentence which read: "No local sales taxes shall be included in determining any estimated tax liability."

The 2011 amendment, effective April 27, 2011, substituted “calendar year” for “fiscal year” in paragraph (b)(1); substituted “\$60,000.00” for “\$30,000.00” in the first sentence of paragraph (b)(2); and, in subsection (c), substituted “Rentals” for “Gross proceeds from rentals” and substituted “sales price” for “gross proceeds”.

Law reviews. — For article, “Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-50. Compensation of dealers for reporting and paying tax; reimbursement deduction.

(a) As used in this Code section, the term “affiliated entity” means with respect to any corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity, any other corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity related thereto:

(1) As a parent, subsidiary, sister, or daughter corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity;

(2) By control of one corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity by the other; or

(3) By any other common ownership or control.

(b) Each dealer required to file a return under this article shall include such dealer’s certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article, each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

(1) With respect to each certificate of registration number on such return, a deduction of 3 percent of the first \$3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(2) With respect to each certificate of registration number on such return, a deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any provision of this title, including, but not limited to, sales and use taxes on motor fuel imposed under any of the provisions described in subsection (f) of this Code section but not including Code Section 48-9-14; and

(4) A deduction with respect to Code Section 48-9-14, as defined in Code Section 48-8-2, shall be at the rate of one-half of 1 percent of the total amount due of the prepaid state tax reported due on such return, so long as the return and payment are timely, regardless of the classification of tax return upon which the remittance is made.

(c) The department shall compile and maintain a master registry of the certificate of registration numbers filed on such returns with respect to all the affiliated business entities and multiple locations of each dealer and shall assign a master number to each dealer. Each dealer required to file a return under this article shall also include such dealer's master number on such return if such number has been assigned by the department under this subsection.

(d) With respect to a dealer which consists of only a single sales location or which consists of a group of fewer than four sales locations or affiliated entities, or any combination thereof, claiming such deduction, a separate return shall be filed for each sales location and affiliated entity for each reporting period. With respect to a dealer which consists of a group of four or more sales locations or affiliated entities, or any combination thereof, claiming such deduction, a single, consolidated return shall be filed for such entire group. A consolidated return under this subsection shall be used for the purpose of identifying the sales locations or affiliated entities of a dealer and such consolidated return shall identify separately the reporting and paying of the tax due under this article for each sales location or affiliated entity of such dealer. The deduction requirements of subsection (b) of this Code section shall apply separately to each certificate of registration number on such return.

(e) No deduction shall be allowed under this Code section unless all of the requirements of subsections (b), (c), and (d) of this Code section have been satisfied.

(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," and any other sales tax, use tax, or sales and use

tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return.

(g) The reimbursement deduction authorized under Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," shall be at the rate and subject to the requirements specified under subsections (b) through (f) of this Code section.

(h) Each certified service provider as defined in Code Section 48-8-161 shall receive the amount provided in the contract between the certified service provider and the Streamlined Sales Tax Governing Board. (Ga. L. 1951, p. 360, § 16; Ga. L. 1964, p. 57, § 1; Ga. L. 1965, p. 321, § 1; Ga. L. 1966, p. 505, § 1; Ga. L. 1975, p. 101, § 1; Code 1933, § 91A-4522, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 815, § 1; Ga. L. 1993, p. 995, § 1; Ga. L. 2003, p. 355, § 5; Ga. L. 2003, p. 665, § 15; Ga. L. 2004, p. 425, § 1; Ga. L. 2005, p. 159, § 23/HB 488; Ga. L. 2007, p. 309, § 3/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 14/HB 1221.)

The 2010 amendment, effective January 1, 2011, in paragraph (b)(4), deleted "paragraph (5.2) of" preceding "Code Section 48-8-2" near the beginning; and added subsection (h).

48-8-52. Dealers' duty to keep records of sales, purchases, and invoices of goods; examination by commissioner; assessment and collection when no or incorrect invoice produced; presumption of correctness; fixing of actual consideration for lease or rental; collection.

(a)(1) Each dealer required to make a return and pay any tax under this article shall keep and preserve:

(A) Suitable records of the sales and purchases taxable under this article;

(B) Other books of account which are necessary to determine the amount of tax due;

(C) Other information as required by the commissioner; and

(D) For a period of three years, all invoices and other records of goods, wares, merchandise, and other subjects of taxation under this article.

(2) All books, invoices, and other records required to be kept by this subsection shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In the event the dealer has imported tangible personal property and fails to produce an invoice showing the purchase price of each article subject to tax or if the invoice does not reflect the true or actual purchase price, the commissioner shall ascertain in any manner feasible the true purchase price and shall assess and collect the tax with interest and penalties as accrued on the true purchase price as assessed by the commissioner. The assessment so made shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

(c) In the case of the lease or rental of tangible personal property when the consideration reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, the commissioner may fix the true or actual consideration and collect the tax on the consideration in the same manner as provided in Code Section 48-8-51, with interest and penalties as accrued. (Ga. L. 1951, p. 360, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 200, § 1; Code 1933, § 91A-4525, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 662, § 15/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted "purchase price" for "cost price" throughout subsection (b).

48-8-58. Property sold returned to dealer by purchaser; "return allowance" defined; credit for tax payments; deduction of return allowance; claim for refund of tax credit by retired dealer; forms; effect of failure to secure forms.

(a)(1) As used in this subsection, the term "return allowance" means the amount of the sales price or purchase price refunded by the dealer to the purchaser in cash or credit. No credit shall be allowed to the dealer under this subsection for taxes collected by such dealer from the purchaser unless the taxes collected have been returned by the dealer to the purchaser.

(2) When property sold is subsequently returned by agreement to the dealer by the purchaser, the dealer shall be entitled to credit for the tax imposed by this article with respect to the return allowance, in the manner prescribed by the commissioner, as follows:

(A) The dealer in the original return for the taxable period in which the return of the property is allowed may deduct from the dealer's gross sales the amount of the return allowance; or

(B) When a dealer has retired from business and has filed a final return, a claim for refund of the tax for which the dealer would be entitled to credit under this subsection may be filed within the time and in the manner prescribed under Code Section 48-2-35.

(b) The commissioner shall make available to dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. Failure of any dealer to secure the commissioner's forms shall not relieve the dealer from the payment of the tax at the time and in the manner provided in this article.

(c) The commissioner shall promulgate any rules and regulations necessary to implement this Code section. (Ga. L. 1951, p. 360, § 21; Ga. L. 1976, p. 341, § 1; Code 1933, § 91A-4530, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 200, § 5/HB 1310; Ga. L. 2010, p. 662, § 16/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted "purchase price" for "cost price" in paragraph (a)(1).

48-8-59. Dealer's certificate of registration; one license for all operations of single business in state; application for certificate; contents; conditions for valid certificate; renewal fee after revocation or suspension of certificate.

(a)(1) Every person desiring to engage in or conduct business as a seller or dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business.

(2) Each person whose business extends into more than one county shall be required to secure only one certificate of registration under this article. The certificate of registration shall cover all operations of the company throughout this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall contain the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. Except for sellers or dealers who register with the Streamlined Sales Tax Governing Board, the application shall be signed:

(1) If the owner is an individual, by the individual;

(2) In the case of an association or partnership, by a member or partner; or

(3) In the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application. Written evidence of this authority to sign shall be attached to the application.

(c) When the required application has been made, the commissioner shall issue to the applicant a separate certificate of registration for each place of business within the state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the certificate. The certificate shall be conspicuously displayed at all times at the place for which the certificate is issued.

(d) A seller whose certificate of registration has been previously suspended or revoked shall pay the commissioner a fee of \$1.00 for the renewal or issuance of a certificate of registration. (Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-4532, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 662, § 17/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “Except for sellers or dealers who register with the Streamlined Sales Tax Governing Board, the” for “The” in the second sentence of the introductory language of subsection (b).

RESEARCH REFERENCES

ALR. — Recovery of sales taxes paid on bad debts, 38 ALR6th 255.

48-8-63. “Nonresident subcontractor” defined; payment of tax by contractors furnishing tangible personal property and services; liability of seller; withholding of payments due subcontractor; rate; bond; exemption of property unconsumed in use; property deemed consumed; property of the state or of the United States.

(a) As used in this Code section, the term “nonresident subcontractor” means a person who does not have a bona fide place of business in Georgia through the maintaining of a permanent domicile or business facility engaged in contracting real property work and who contracts with a prime or general contractor to perform all or any part of the contract of the prime or general contractor or who contracts with a subcontractor who has contracted to perform any part of the contract entered into by the prime or general contractor.

(b) Each person who orally, in writing, or by purchase order contracts to furnish tangible personal property and to perform services under the contract within this state shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax imposed by this article at the time of the purchase. Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax. This Code section shall not relieve the dealer who made the sale from such dealer’s liability to collect and pay the tax on purchases by a contractor.

(c) Each person who contracts to perform services in this state and who is furnished tangible personal property for use under the contract by the person, or such person's agent or representative, for whom the contract is to be performed, when a sales or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used and shall pay a use tax based on the fair market value of the tangible personal property so used irrespective of whether any right, title, or interest in the tangible personal property becomes vested in the contractors.

(d) Each person who orally, in writing, or by purchase order contracts to perform any service the principal part of which is the furnishing of machinery which will not be under the exclusive control of the contractor shall be liable to collect a sales tax on the rental value of the machinery so used. If labor and other charges are not separated from the rental charge, the person so contracting shall be liable to collect a sales tax on the entire contract price.

(e)(1) Any subcontractor who enters into a construction contract with a general or prime contractor shall be liable under this article as a general or prime contractor. Any general or prime contractor who enters into any construction contract or contracts with any nonresident subcontractor, where the total amount of such contract or contracts between such general or prime contractor and any nonresident subcontractors on any given project equals or exceeds \$250,000.00, shall withhold 2 percent of the payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed this state.

(2) The prime or general contractor shall withhold payments on all contracts that meet the criteria specified in paragraph (1) of this subsection until the nonresident subcontractor furnishes such prime or general contractor with a certificate issued by the commissioner showing that all sales taxes accruing by reason of the contract between the nonresident subcontractor and the general or prime contractor have been paid and satisfied. If the prime or general contractor for any reason fails to withhold 2 percent of the payments due the nonresident subcontractor under their contract, such prime or general contractor shall become liable for any sales or use taxes due or owed this state by the nonresident subcontractor.

(f) Whenever a nonresident subcontractor holding a contract with a general or prime contractor has posted with the commissioner either a good and valid bond with a surety company authorized to do business in this state or legal securities in an amount of not less than \$5,000.00 nor more than \$50,000.00, as determined by the commissioner, conditioned that all sales and use taxes which may accrue to this state on account

of the execution of contracts that meet the criteria established in paragraph (1) of subsection (e) of this Code section by nonresident subcontractors will be paid when due, no general or prime contractor shall withhold any sums due the nonresident subcontractor under their contract with respect to sales and use taxes.

(g) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the United States in the performance of contracts with the United States when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection.

(h)(1) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the State of Georgia, the University System of Georgia, or any county, municipality, local board of education, or other political subdivision of this state in the performance of contracts with such entities when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection. Any governmental entity which furnishes tangible personal property to a contractor for incorporation into a construction, renovation, or repair project conducted pursuant to a contract with such governmental entity shall issue advance written notice to such contractor of the amount of tax owed for such tangible personal property. The failure of the governmental entity to issue such advance written notice to the contractor of such tax liability shall render such governmental entity liable for such tax.

(2) This subsection shall not apply with respect to the use of tangible personal property owned by the United States.

(i) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Ga. L. 1955, p. 389, §§ 1, 2; Code 1933, § 91A-4536, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 97; Ga. L. 1989, p. 62, § 9; Ga. L. 2000, p. 411, § 2; Ga. L. 2005, p. 498, § 1/HB 306; Ga. L. 2006, p. 59, § 2/HB 111; Ga. L. 2012, p. 774, § 1/HB 932.)

The 2012 amendment, effective July 1, 2012, in subsection (e), substituted “, shall withhold 2 percent” for “shall withhold up to 4 percent” in the last sentence

of paragraph (e)(1), and substituted “withhold 2 percent” for “withhold up to 4 percent” in the last sentence of paragraph (e)(2).

48-8-67. Distribution of certain unidentifiable sales and use tax proceeds; limitations; powers and duties of state revenue commissioner.

(a) As used in this Code section, the term “authorized recipient” means the state, special districts, counties, or municipalities, or any combination thereof, as determined by general law, applicable local constitutional amendment, or Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965,” which specifies the entities to whom the commissioner is directed to distribute the proceeds of sales and use taxes.

(b) When a dealer makes a return with insufficient information to identify proceeds as being attributable to retail sales, retail purchases, rentals, storage, use, or consumption of tangible personal property or services occurring within a particular special district or particular county, the commissioner shall make reasonable efforts to obtain the information needed to make a distribution of those proceeds. When the information cannot be obtained, the commissioner shall allocate unidentifiable proceeds among the authorized recipients in the same proportion as the proceeds of the sales and use taxes are otherwise allocated and distributed to the authorized recipients. Each allocation of unidentifiable proceeds shall be calculated by determining each authorized recipient’s pro rata share of identifiable proceeds collected during the same period of time in which the unidentifiable proceeds to be allocated were collected. Each authorized recipient’s pro rata share of the unidentifiable proceeds for each such collection period shall be the same as that authorized recipient’s pro rata share of the identifiable proceeds for the same collection period.

(c) The initial allocation of such unidentifiable proceeds shall be distributed in the manner consistent with subsection (b) of this Code section before July 1, 1998, and such allocation shall include all amounts of such unidentifiable proceeds that have been collected subsequent to June 30, 1997, and prior to April 1, 1998, and which have not been distributed by the commissioner at the time of the initial distribution. Such initial distribution of unidentifiable proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient. In lieu of interest earned on such unidentifiable proceeds, an amount equivalent to 5 percent of the initial distribution amount shall be allocated and distributed by the commissioner in a similar manner, if funds are specifically appropriated for such purpose.

(d) Following the initial allocation under subsection (c) of this Code section, allocations of unidentifiable proceeds shall be made by the

commissioner according to a schedule provided for by rules and regulations of the commissioner but in no event less often than twice per year. Any such subsequent distribution of unidentified proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient.

(e) Information regarding proceeds distributed to authorized recipients pursuant to this Code section shall be identified by the commissioner, and such information shall be made available upon request.

(f) The department shall at the time of the first distribution of such unidentifiable proceeds provide each authorized recipient with written notice advising each authorized recipient that negotiation of the first distribution shall constitute a release and full accord and satisfaction for any and all refund requests or claims with respect to any sales and use tax collected prior to April 1, 1998, which the authorized recipient has or may have for recovery of any such tax funds. Negotiation of the first distribution shall also constitute full and complete acceptance of all the terms and conditions set forth in this Code section and shall bar any challenges to this Code section.

(g) The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient distribution of state and local sales and use tax proceeds in accordance with this Code section. (Code 1981, § 48-8-67, enacted by Ga. L. 1998, p. 769, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2001, p. 984, § 18; Ga. L. 2005, p. 159, § 24/HB 488; Ga. L. 2009, p. 723, § 1/HB 181; Ga. L. 2011, p. 47, § 2/HB 322.)

The 2011 amendment, effective April 27, 2011, deleted subsection (h), which read: "The authority of the commissioner to make distributions pursuant to this

Code section shall cease on December 31, 2011, unless such authority is extended by a subsequent general Act of the General Assembly."

48-8-68. Relief from liability in certain circumstances for failure to collect tax at new rate.

If the sales tax rate changes with less than 30 days between the enactment of the rate change and the effective date of such rate change, sellers shall be relieved of liability for failing to collect tax at the new rate if:

(1) The seller collected tax at the immediately preceding effective rate; and

(2) The seller's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate.

The provisions of this Code section do not apply if the commissioner establishes that the seller fraudulently failed to collect at the new rate

or solicits purchasers based on the immediately preceding effective rate. (Code 1981, § 48-8-68, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-69. Purchases from printed catalogs; local jurisdiction boundary changes.

(a) Any local sales tax rate changes made pursuant to this chapter shall apply to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

(b) For sales and use tax purposes only, local jurisdiction boundary changes are effective only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers. (Code 1981, § 48-8-69, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section law on real property, see 62 Mercer L. Rev. 283 (2010).
became effective January 1, 2011.

Law reviews. — For annual survey of

48-8-70. Determination of ZIP Code designation applicable to particular purchases; rebuttable presumption of seller's due diligence.

If a nine-digit ZIP code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit ZIP code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit ZIP code area. For the purposes of this Code section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine digit ZIP code designation by utilizing software approved by the Streamlined Sales Tax Governing Board that makes this designation from the street address and the five-digit ZIP code applicable to a purchase. (Code 1981, § 48-8-70, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-71. Immunity from liability for reliance upon erroneous data provided by the state on tax rates, local boundaries, and taxing jurisdiction assignments.

Sellers and certified service providers shall not be liable for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state on state and local tax rates, local boundaries, and taxing jurisdiction assignments. (Code 1981, § 48-8-71, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-72. Over-collected sales or use tax.

(a) A cause of action against a seller for over-collected sales or use taxes does not accrue until a purchaser has provided written notice to the seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

(b) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(1) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(2) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances. (Code 1981, § 48-8-72, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-73. Immunity from liability for reliance upon erroneous taxability matrix data provided by the state.

A seller and certified service provider are relieved of liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state in the taxability matrix. (Code 1981, § 48-8-73, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-74. Effective date for sales tax rate change.

The effective date for a sales tax rate change for services covering a period starting before and ending after the statutory effective date shall be as follows:

- (1) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and
- (2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date. (Code 1981, § 48-8-74, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-75. Purchaser's immunity from liability for failure to pay correct sales tax under certain circumstances.

(a) A purchaser shall be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax if:

- (1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;
- (2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;
- (3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state; or
- (4) A purchaser using databases provided by this state relied on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments.

(b) A purchaser shall be relieved from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (a) of this Code section provided that, with respect to reliance on the taxability matrix completed by this state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price," or "excluded from sales price" or "included in the definition" or "excluded from the definition." (Code 1981, § 48-8-75, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "in" was

inserted following "described" in subsection (b).

48-8-76. Compliance with terms of Streamlined Sales and Use Tax Agreement; relief from certain obligations.

(a) A seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Streamlined Sales and Use Tax Agreement is relieved from the obligation to remit uncollected sales tax provided the seller was not so registered in this state in the twelve-month period preceding the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(b) The relief provided in subsection (a) of this Code section precludes an assessment for uncollected or unpaid sales together with penalty or interest for sales made during the period the seller was not registered in this state, provided that the registration occurs within 12 months of the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(c) The relief provided in subsection (a) of this Code section shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

(d) The relief provided in subsection (a) of this Code section shall not be available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(e) The relief provided in subsection (a) of this Code section is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations applicable to asserting a tax liability is tolled during this 36 month period.

(f) The relief provided in subsection (a) of this Code section is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer. (Code 1981, § 48-8-76, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-77. Sourcing; definitions; sales of “advertising and promotional direct mail” and “other direct mail”; sales of telecommunication service.

(a) This Code section shall not be construed to impose sales and use tax on any tangible personal property or service which was not subject to such tax prior to January 1, 2011.

(b)(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser’s donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) When subparagraph (A) or (B) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith;

(D) When subparagraph (A), (B), or (C) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When subparagraph (A), (B), (C), or (D) of this paragraph does not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in paragraph (3) or (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail

sale in accordance with the provisions of paragraph (1) of this subsection. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in paragraph (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection, notwithstanding the exclusion of lease or rental in paragraph (1) of this subsection. As used in this paragraph, "transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(B) Trucks and truck-tractors with a Gross Vehicle Weight Rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(C) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(D) Containers designed for use on and component parts attached or secured on the items set forth in subparagraph (A), (B), or (C) of this paragraph.

(c) For the purposes of paragraph (1) of subsection (b) of this Code section, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" shall not include possession by a shipping company on behalf of the purchaser.

(d)(1) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of "advertising and promotional direct mail":

(A) A purchaser of "advertising and promotional direct mail" may provide the seller with either:

(i) A direct pay permit;

(ii) An agreement certificate of exemption claiming "direct mail" or other written statement approved, authorized, or accepted by the state; or

(iii) Information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients;

(B) If the purchaser provides the permit, certificate, or statement referred to in division (i) or (ii) of subparagraph (A) of this

paragraph, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “advertising and promotional direct mail” to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to the recipients and shall report and pay any applicable tax due;

(C) If the purchaser provides the seller information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of “advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser; and

(D) If the purchaser does not provide the seller with any of the items listed in subparagraph (A) of this paragraph, the sale shall be sourced according to Section 310.A.5 of the Streamlined Sales and Use Tax Agreement. The state to which the “advertising and promotional direct mail” is delivered may disallow credit for tax paid on sales sourced under this paragraph.

(2) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of “other direct mail”:

(A) Except as otherwise provided in this paragraph, sales of “other direct mail” are sourced in accordance with subparagraph (b)(1)(C) of this Code section;

(B) A purchaser of “other direct mail” may provide the seller with either:

(i) A direct pay permit; or

(ii) An agreement certificate of exemption claiming “direct mail” or other written statement approved, authorized, or accepted by the state; and

(C) If the purchaser provides the permit, certificate, or statement referred to in paragraph (1) or (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving “other direct mail” to which the permit, certificate, or statement apply. Notwithstanding paragraph (1) of this subsection, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be

delivered to the recipients and the purchaser shall report and pay applicable tax due.

(3) For purposes of this subsection, the term:

(A) "Advertising and promotional direct mail" means:

(i) Printed material that meets the definition of "direct mail," under Code Section 48-8-2;

(ii) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this division, the term "product" means tangible personal property, a product transferred electronically or a service.

(B) "Other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to:

(i) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(iii) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational messages.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(4)(A)(i) This paragraph shall apply to a transaction characterized under this chapter as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of "direct mail."

(ii) This paragraph shall not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether "advertising and promotional direct mail" is included in the same mailing.

(B) If a transaction is a "bundled transaction" that includes "advertising and promotion direct mail," this subsection shall apply only if the primary purpose of the transaction is the sale of products

or services that meet the definition of “advertising and promotional direct mail.”

(C) Nothing in this paragraph shall limit any purchaser’s:

(i) Obligation for sales or use tax to any state to which the direct mail is delivered,

(ii) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(iii) Right to a refund of sales or use taxes overpaid to any jurisdiction.

(D) This subsection applies for purposes of uniformly sourcing “direct mail” transactions and does not otherwise impose requirements regarding the taxation of products that meet the definition of “direct mail” or to the application of sales for resale or other exemptions.

(e)(1) Except for the defined telecommunication services in paragraph (3) of this subsection, the sale of telecommunication service sold on a call-by-call basis shall be sourced to:

(A) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunication services in paragraph (3) of this subsection, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer’s place of primary use.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with subsection (b) of this Code section; provided, however, that in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of this Code Section shall include as an option the location associated with the mobile telephone number.

(4) The sale of an ancillary service is sourced to the customer’s place of primary use. (Code 1981, § 48-8-77, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2011, p. 38, § 8/HB 168.)

Effective date. — This Code section became effective January 1, 2011.

The 2011 amendment, effective April 27, 2011, substituted “subparagraph

(b)(1)(C)” for “subparagraph (l)(1)(A)” in subparagraph (d)(2)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, “para-

graph (1)” was substituted for “paragraph (1)” in the last sentence of subparagraph (d)(2)(C).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of

Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-77.1. Certification of review software by department; relief from liability.

(a) For purposes of this Code section, the definitions as provided in Code Section 48-8-161 shall apply.

(b) The department shall review software submitted to the Streamlined Sales Tax Governing Board for certification as a Certified Automated System under Section 501 of the Streamlined Sales and Use Tax Agreement. Such review shall include a review to determine that the program accurately reflects the taxability of the product categories included in the program. Upon approval by the department, the state will certify its acceptance of the software to the Streamlined Sales Tax Governing Board.

(c) The department shall relieve certified service providers and model 2 sellers from liability to the state and local jurisdictions in the state for not collecting sales or use taxes resulting from the certified service provider or model 2 seller relying on the certification provided by the state.

(d) The department shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under Code Section 48-8-38.

(e) If the department determines that an item or transaction is incorrectly classified as to the item or transaction’s taxability, the department shall notify the certified service providers or model 2 sellers of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the department of the determination. (Code 1981, § 48-8-77.1, enacted by Ga. L. 2011, p. 38, § 9/HB 168.)

Effective date. — This Code section became effective April 27, 2011.

ARTICLE 2

JOINT COUNTY AND MUNICIPAL SALES AND USE TAX

48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability to sales of motor fuels and food and beverages.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, §§ 1, 2; Ga. L. 1989, p. 62, § 10; Ga. L. 1991, p. 87, § 3; Ga. L. 1996, p. 1, § 2; Ga. L. 2007, p. 309, § 4/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 19/HB 1221.)

The 2010 amendment, effective January 1, 2011, in the last sentence of this Code section, substituted “defined in Code Section 48-8-2” for “defined by paragraph (5.1) of Code Section 48-8-2” and inserted “and food ingredients” and “alcoholic” near the end.

Law reviews. — For article, “Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-87. Administration and collection of tax by commissioner; applicability of Article 1 of this chapter; first application of moneys to taxpayers’ state tax liabilities; compensation of dealers if payments not delinquent; rate.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this

chapter, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4605, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4607, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1992, p. 815, § 2; Ga. L. 2007, p. 309, § 5/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 20/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted "defined in Code Section 48-8-2" for "defined by paragraph (5.1) of Code Section 48-8-2" in the second sentence.

48-8-89. Distribution and use of proceeds; certificate specifying percentage of proceeds for each political subdivision; determination of proceeds for absent municipalities; procedure for filing certificates; effect of failure to file; renegotiation of certificate.

(a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the governing authority of each qualified municipality within the special district and to the governing authority of the county whose geographical boundary is conterminous with that of the special district for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(b) It is the intent of the General Assembly that no agreement as to the distribution of the proceeds of the tax shall enrich any political subdivision beyond a sum which in the absence of the distribution would be raised through other sources of revenue. The distribution

shall be in accordance with a certificate which shall be executed in behalf of each respective governing authority, except as otherwise provided in this subsection, and which shall encompass all respective political subdivisions, shall be filed with the commissioner, and shall specify by percentage that portion of the remaining proceeds of the tax available for distribution which each such political subdivision shall receive. On or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the following criteria:

(1) The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic events and the inherent value to a community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county;

(2) The service delivery responsibilities of each political subdivision to the resident population of the subdivision;

(3) The existing service delivery responsibility of each political subdivision;

(4) The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt;

(5) The point of sale and use which generates the tax to be apportioned;

(6) The existence of intergovernmental agreements among and between the political subdivisions;

(7) The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision; and

(8) Any coordinated plan of county and municipal service delivery and financing.

Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears

to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. No certificate may contain a total of specified percentages in excess of 100 percent. The certificate shall be filed with the commissioner by March 1, 1980, for those special districts in which the tax authorized by this article is being levied on January 1, 1980. For all other special districts in which the tax shall be imposed subsequent to January 1, 1980, the certificate shall be filed with the commissioner within 60 days after the tax is imposed within the district. The commissioner shall continue to distribute the proceeds of the tax as otherwise provided in this Code section until the first day of the next calendar year following the month in which the commissioner receives a certificate as provided in this Code section, which certificate shall provide other percentages upon which the commissioner shall make the distribution to the political subdivisions entitled to the proceeds of the tax. At such time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with the directions of the certificate.

(c) If the certificate provided for in subsection (b) of this Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on the first day of the second calendar month following the month in which the tax was initially imposed and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until he receives a certificate in behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the state's general fund.

(d)(1) A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a new distribution certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the require-

ment for government services is not always in direct correlation with population. Although a new distribution certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority on behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the commissioner and all eligible political subdivisions within the special district.

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4)(A) If the parties necessary to an agreement fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, as required by paragraph (3) of this subsection, any of such parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition shall be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of this subsection. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

(B) Following the filing of the petition as specified under subparagraph (A) of this paragraph, the county and qualified municipi-

palities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district shall separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from the county and one such offer from qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district. The offer from the county may be an offer representing the county and any qualified municipalities that are not represented in the offer from the qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

(C) Any qualified municipality or municipalities located wholly or partially within the special district who are not a party to an offer under subparagraph (B) of this paragraph, and who represent at least one-half of the aggregate municipal population of all qualified municipalities who are not a party to an offer under subparagraph (B) of this paragraph, shall be authorized to separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from such qualified municipality or municipalities.

(D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into account the allocation required for any absent municipalities in accordance with subsection (b) of this Code section. The judge shall conduct such hearings as the judge deems necessary and shall render a decision based on the requirements and intent of paragraph (1) of this subsection and the criteria in subsection (b) of this Code section. The judge's decision shall adopt the best and final offer of one of the parties submitted under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax proceeds and shall also include findings of fact. The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner.

(E) A final order entered under subparagraph (D) of this paragraph shall be subject to appeal by application upon one or more of the following grounds:

- (i) The judge's disregard of the law;
- (ii) Partiality of the judge; or
- (iii) Corruption, fraud, or misconduct by the judge or a party.

(F) During the process set forth in this paragraph, the commissioner shall continue to distribute the sales tax proceeds according

to the percentages specified in the most recently filed distribution certificate or in accordance with subsection (f) of Code Section 48-8-89.1, as applicable, until a new distribution certificate is properly filed.

(5) If a new distribution certificate as provided for in this Code section is not received by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall transfer the proceeds to the state's general fund.

(6) If the commissioner receives a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was executed by the parties or the judge or the first day of the second calendar month following the month such certificate was executed by the parties or the judge, whichever is sooner.

(7) Costs of any conflict resolution under paragraph (3) or (4) of this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the tax as reflected by the new distribution certificate.

(8) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 2; Code 1933, § 91A-4606, enacted by Ga. L. 1978, p. 309,

§ 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4608, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64; Ga. L. 1994, p. 1816, §§ 1, 2; Ga. L. 2010, p. 958, § 1/HB 991.)

The 2010 amendment, effective June 4, 2010, rewrote subsection (d).

48-8-89.1. Procedure for certifying additional qualified municipalities; issuance of new distribution certificate; cessation of authority to collect tax ceases upon failure to file new certificate.

(a) If there exists within any special district in which the tax authorized by this article is imposed a qualified municipality which was not a qualified municipality on the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89, such qualified municipality may request the commissioner to give notice of the qualified municipality's existence as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he determines that the requesting entity is not a qualified municipality, within 30 days give written notice of the qualified municipality's existence to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality, the effective date of the notice, and a statement of the provisions of this Code section.

(b) Within 60 days after the effective date of the notice referred to in subsection (a) of this Code section, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. In the event such a petition is filed, a new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district shall be subject to the same requirements applicable to qualified municipalities located wholly or partially within the special district under paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall specify by percentage what portion of the proceeds of the tax available for distribution within the special district shall be received by the county in which the special district is located and by each qualified municipality located wholly or

partially within the special district, including the new qualified municipality. No distribution certificate shall contain a total of specified percentages in excess of 100 percent.

(c) Except as otherwise provided in this subsection, a distribution certificate required by this Code section must be executed by the governing authorities of the county within which the special district is located and each qualified municipality located wholly or partially within the special district, including the new qualified municipality. Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed.

(d) If a new certificate is not filed for any special district as required by this Code section, the authority to impose the tax authorized by Code Section 48-8-82 within that special district shall cease on the first day of January of the year following the year in which the required distribution certificate could last have been timely filed. In any special district in which the authority to impose the tax is terminated pursuant to this subsection, the tax may thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86.

(e) If a new certificate is filed as required by this Code section, the commissioner shall begin to distribute the proceeds as specified in the new certificate on the first day of January of the first calendar year which begins more than 60 days after the effective date of the notice referred to in subsection (b) of this Code section. The commissioner shall continue to distribute the proceeds of the tax according to the new certificate until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

(f)(1) As used in this subsection, the term:

(A) "New qualified municipality" means a municipal corporation which has been chartered by local Act since the date of filing with the commissioner of the most recently filed certificate under Code

Section 48-8-89 within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of the new municipality from the unincorporated area, constitutes less than 20 percent of the population of the county according to the most recent decennial census.

(B) "Newly expanded qualified municipality" means a municipal corporation which since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 has increased its population by more than 15 percent through one or more annexations and is located in the same county as a new qualified municipality.

(2) Notwithstanding any other provision of this Code section, if there exists within any special district in which the tax authorized by this article is imposed a new qualified municipality or a newly expanded qualified municipality or both, such qualified municipality or municipalities may request the commissioner to give notice of the qualified municipality's or municipalities' existence and status as a new qualified municipality or newly expanded qualified municipality as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he or she determines that the requesting entity is not a new qualified municipality or newly expanded qualified municipality, within 30 days give written notice of the qualified municipality's existence and status to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality or newly expanded qualified municipality, the effective date of the notice, and a statement of the provisions of this subsection.

(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of this subsection, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality or newly expanded qualified municipality located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall address only the proceeds of the tax available for distribution from the percentage

allocated to the county in the current distribution certificate and shall specify as a percentage of the total proceeds of the tax what portion of the proceeds shall be received by the county in which the special district is located and by the new qualified municipality and newly expanded qualified municipality located wholly or partially within the special district, if any.

(4) Except as otherwise provided in this paragraph, a distribution certificate required by this subsection must be executed by the governing authorities of the county within which the special district is located each new qualified municipality located wholly or partially within the special district, and each newly expanded qualified municipality, if any. If a new certificate is not filed within 60 days as required by paragraph (3) of this subsection, the commissioner shall distribute the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate such that:

(A) The new qualified municipality receives an allocation equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89; and

(B) Any newly expanded qualified municipality receives a total allocation of tax proceeds (including any amount previously allocated) equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89.

Every other qualified municipality shall continue to receive the share provided by the existing distribution certificate or otherwise provided by law. The county shall receive the remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89. For the purpose of determining the population of qualified municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. For the purpose of determining population under this Code section, all calculations of population shall be according to the most recent decennial census, including the census data from such census applicable to any annexed territory.

(5) The commissioner shall begin to distribute the proceeds as specified in the newly filed certificate or, if such a certificate is not filed, as specified in paragraph (4) of this subsection on the first day of the first month which begins more than 60 days after the effective date of the notice referred to in paragraph (2) of this subsection. The

commissioner shall continue to distribute the proceeds of the tax according to the existing certificate and the certificate applicable to the county and the new qualified municipality or, if such a certificate is not filed, as specified in paragraph (4) of this subsection until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89. (Code 1981, § 48-8-89.1, enacted by Ga. L. 1983, p. 1461, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 2005, p. 185, § 4/HB 36; Ga. L. 2006, p. 901, § 1/HB 1403; Ga. L. 2010, p. 958, §§ 2, 3/HB 991.)

The 2010 amendment, effective June 4, 2010, in subsection (b), added “or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89” at

the end of the first sentence, added the present second sentence, substituted “The new distribution” for “This distribution” at the beginning of the present third sentence, and substituted “shall contain” for “may contain” in the last sentence; in paragraph (f)(3), added the language beginning with “or, within 30 days after the last day” and ending with “paragraph (4) of subsection (d) of Code Section 48-8-89” at the end of the first sentence, and, in the last sentence, substituted “The new distribution” for “This distribution” at the beginning, and added “located wholly or partially within the special district” near the end.

48-8-92. Referendum election to decide discontinuing imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.

(a) Whenever the governing authority of any county and the governing authorities of at least one-half of qualified municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, such governing authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two

weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

- “() YES Shall the 1 percent retail sales and use tax being levied within the special district within _____
 () NO County be terminated?”

(b) All persons desiring to vote in favor of discontinuing the tax shall vote “Yes,” and all persons opposed to discontinuing the tax shall vote “No.” If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be such superintendent’s further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4616, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 2010, p. 958, § 4/HB 991.)

The 2010 amendment, effective June 4, 2010, in subsection (a), in the first sentence, substituted “and the governing authorities of at least one-half of qualified municipalities” for “or qualified municipality” near the beginning, substituted “wish” for “wishes”, substituted “such governing authorities” for “the governing authority” near the middle, and substituted “joint resolution of the governing authorities” for “resolution of the governing authority” near the end, and, in the third

sentence, substituted “issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540” for “set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call”; and, in subsection (b), in the second sentence, substituted “tax shall not” for “tax may not” near the middle, and substituted “such superintendent’s” for “his” in the fourth sentence.

48-8-93. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.

No tax provided for in Code Section 48-8-82 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the joint tax is imposed regardless of the point at

which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4615, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4613, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2012, p. 580, § 19/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety" for "Inter-

state Commerce Commission or the Georgia Public Service Commission" at the end of this Code section.

48-8-96. Taxation of property in consolidated governments; change in tax rates.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities in which consolidated government homestead property (exclusive of improvements) is valued for purposes of local ad valorem taxation according to a base year assessed value which does not change so long as the property is actually occupied by the same owner as a homestead, the provisions of this Code section shall control over any conflicting provisions of Article 1 of this chapter or this article.

(b) If the tax authorized by this article is in effect in the special district containing a consolidated government referred to in subsection (a) of this Code section, then the rate of tax imposed under this article in such special district may be increased from 1 percent to 2 percent if such increase is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

"() YES Shall the retail sales and use tax levied
within the special district within
() NO _____ County be increased from 1
percent to 2 percent?"

(c) Such increased tax rate shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which such increase was approved by the voters. The proceeds of the increased tax shall be divided in the same proportions as the original tax.

(d) Such increased tax rate may be decreased from 2 percent to 1 percent if such decrease is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

“() YES Shall the retail sales and use tax levied
within the special district within
() NO _____ County be decreased from 2
percent to 1 percent?”

(e) Such decreased tax rate shall become effective on the first day of the second calendar quarter following the month in which the commissioner receives certification of the result of the election.

(f) If the tax authorized by this article is to be newly imposed in the special district containing a consolidated government referred to in subsection (a) of this Code section, then such tax may be imposed in such special district at the rate of 2 percent if such rate is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

“() YES Shall a retail sales and use tax of 2 percent
be levied within the special district
() NO within _____ County?”

(g) Such 2 percent tax may be discontinued if such discontinuation is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

“() YES Shall the retail sales and use tax levied
within the special district within

() NO _____ County be terminated?"

(h)(1) In the case of increase from 1 percent to 2 percent, the amount in excess of the initial 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(2) In the case of a newly imposed 2 percent sales and use tax under this Code section, only the amount in excess of a 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(i) In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government referred to in subsection (a) of this Code section shall be in the same manner as the levy of the tax by any other county. (Code 1981, § 48-8-96, enacted by Ga. L. 2004, p. 69, § 6; Ga. L. 2010, p. 662, § 21/HB 1221.)

The 2010 amendment, effective January 1, 2011, deleted “furnishing for value to the public of any room or rooms, lodgings, or accommodations which are subject to taxation under Article 3 of Chapter 13 of this title or to the” preceding “sale of motor vehicles” in paragraph (h)(1); and

deleted “furnishing for value of any room or rooms, lodgings, or accommodations which are subject to tax under Article 3 of Chapter 13 of this title or to the” preceding “sale of motor vehicles” in paragraph (h)(2).

ARTICLE 2A

HOMESTEAD OPTION SALES AND USE TAX

48-8-101.1. Equal distribution of homestead option sales and use tax among counties and municipalities.

JUDICIAL DECISIONS

Amendment to Homestead Option Sales and Use Tax not payment of gratuity. — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a), because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay pro-

ceeds the legislature determined the city’s residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the geographical boundaries of the county in expending HOST revenues for capital outlay projects that benefited the special tax district. *DeKalb County v. Perdue*, 286 Ga. 793, 692 S.E.2d 331 (2010).

48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this article, except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of the sales and use tax levied and collected under this article shall be used only for the purposes of funding capital outlay projects and of funding services within a special district equal to the revenue lost to the homestead exemption as provided in Code Section 48-8-104 and, in the event excess funds remain following the expenditure for such purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of Code Section 48-8-104.

(2) Prior to January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is imposed, such proceeds may be used for funding all or any portion of those services which are to be provided by the governing authority of the county whose geographic boundary is conterminous with that of the special district pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this article. Such exemption shall commence with taxable years beginning on or after January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is levied. Any such local Act shall

incorporate by reference the terms and conditions specified under this article. Any such local Act shall not be subject to the provisions of Code Section 1-3-4.1. Any such homestead exemption under this article shall be in addition to and not in lieu of any other homestead exemption applicable to county taxes for county purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-103 is adopted prior to the issuance of the call for the referendum under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

(e) No sales and use tax shall be levied in a special district under this article in which a tax is levied and collected under Article 2 of this chapter. (Code 1981, § 48-8-102, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1996, p. 1, § 3; Ga. L. 1997, p. 1, § 2; Ga. L. 1997, p. 157, § 1A; Ga. L. 2007, p. 309, § 6/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 22/HB 1221.)

The 2010 amendment, effective January 1, 2011, near the end of subsection (b), substituted “defined in Code Section 48-8-2” for “defined by paragraph (5.1) of Code Section 48-8-2”, and substituted “food and food ingredients and alcoholic beverages” for “food and beverages”.

Law reviews. — For article, “Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

JUDICIAL DECISIONS

Contract between county and cities. — Trial court did not err in granting a county summary judgment in cities’ action for breach of an intergovernmental agreement (IGA) the parties entered into pursuant to the Homestead Option Sales and Use Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., because the IGA was not a valid intergovernmental contract under the Intergovernmental Contracts Clause of the Georgia Constitution, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a), since the focus and clear purpose of the IGA was to provide a formula for the distribution of the HOST revenues, and the IGA could not be deemed an agreement for the provision of authorized “services”; the IGA was an agreement about how to divide and dis-

tribute HOST revenues between the county and the cities, with the cities agreeing to expend the monies disbursed solely for capital outlay projects to be located within the geographical boundaries of the county and to be owned, operated, or both either by the county, one of more cities or any combination thereof, and the fact that the IGA required the cities to expend the tax proceeds in accordance with the mandates of the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-102, did not transform it into either a contract for services or one for the use of facilities. *City of Decatur v. Dekalb County*, 289 Ga. 612, 713 S.E.2d 846 (2011).

48-8-104. Exclusive administration of tax by commissioner; identification of location where tax collected; manner of disbursement of proceeds.

(a) The sales and use tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection and the amount determined under subsections (d) and (e) of this Code section, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district; provided, however, that a county and any qualified municipality shall be authorized by intergovernmental agreement to waive the equalization amount otherwise required under subsections (d) and (e) of this Code section and provide for a different distribution

amount. In the event of such waiver, except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district. As a condition precedent for the authority to levy the sales and use tax or to collect any proceeds from the tax authorized by this article for the year following the first complete calendar year in which it is levied and for all subsequent years except the year following the year in which the sales and use tax is terminated under Code Section 48-8-106, the county whose geographical boundary is conterminous with that of the special district shall, except as otherwise provided in subsection (c) of Code Section 48-8-102, expend such proceeds as follows:

(A) A portion of such proceeds shall be expended for the purpose of funding capital outlay projects as follows:

(i) The governing authority of the county whose geographical boundary is conterminous with that of the special district shall establish the capital factor which shall not exceed .200 and, for a county in which a qualified municipality is located, shall not be less than the level required by subsection (d) of this Code section; therefore, at a minimum, the county shall set the capital factor at a level that yields an amount of capital outlay proceeds that is equal to or greater than the sum of all equalization amounts due qualified municipalities and existing municipalities under subsection (e) of this Code section; and

(ii) Capital outlay projects shall be funded in an amount equal to the product of the capital factor multiplied by the net amount of the sales and use tax proceeds collected under this article during the previous calendar year, and this amount shall be referred to as capital outlay proceeds in subsections (d) and (e) of this Code section;

(B) A portion of such proceeds shall be expended for the purpose of funding services within the special district equal to the revenue lost to the homestead exemption as provided in this Code section as follows:

(i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus the capital factor times an amount equal to the net amount of sales and use tax collected in the special district pursuant to this article for the previous calendar year, and then dividing by the taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied, rounding the result to three decimal places;

(ii) If the homestead factor is less than or equal to 1.000, the amount of homestead exemption created under this article on qualified homestead property shall be equal to the product of the homestead factor multiplied times the net assessment of each qualified homestead remaining after all other homestead exemptions have been applied; and

(iii) If the homestead factor is greater than 1.000, the homestead exemption created by this article on qualified homestead property shall be equal to the net assessment of each homestead remaining after all other homestead exemptions have been applied; and

(C) If any of such proceeds remain following the distribution provided for in subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code section:

(i) The millage rate levied for county purposes shall be rolled back in an amount equal to such excess divided by the net taxable digest for county purposes after deducting all homestead exemptions including the exemption under this article; and

(ii) In the event the rollback created by division (i) of this subparagraph exceeds the millage rate for county purposes, the governing authority of the county whose boundary is conterminous with the special district shall be authorized to expend the surplus funds for funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d)(1) The commissioner shall distribute to the governing authority of each qualified municipality located in the special district a share of the capital outlay proceeds calculated as provided in this subsection and subsection (e) of this Code section which proceeds shall be expended for the purpose of funding capital outlay projects of such municipality.

(2) Both the tax commissioner and the governing authority for the county in which a qualified municipality is located shall cooperate with and assist the commissioner in the calculation of the equalization amounts under subsection (e) of this Code section and shall, on or before July 1 of each year, provide to the commissioner and the governing authority of each qualified municipality written certification of the following:

(A) The capital factor set by the county for the current calendar year; provided, however, that the capital factor may not exceed 0.200;

(B) The total amount, if any, due to be paid to existing municipalities from the capital outlay proceeds as required by any intergovernmental agreement between the county and such municipalities;

(C) The incorporated county millage rate in each qualified municipality;

(D) The net homestead digest for each qualified municipality;

(E) The total homestead digest; and

(F) The unincorporated county millage rate.

If the tax commissioner and the governing authority of the county fail to provide such certification on or before July 1, the commissioner shall not distribute to such county any additional proceeds of the sales and use tax collected after July 1 unless and until such certification is provided.

(3) The commissioner shall then calculate the equalization amount due each qualified municipality based on the certifications provided by the tax commissioner and the governing authority of the county and pay such amount to the governing authority of each qualified municipality in six equal monthly payments as soon as practicable during or after each of the last six months of the current calendar year. In the event an existing municipality that has entered into an intergovernmental agreement with a county at any time before January 1, 2007, to receive capital outlay proceeds of the homestead option sales and use tax and such intergovernmental agreement has become or does become null and void for any reason, such existing municipality shall be treated under this article the same as if it were a qualified municipality as defined in paragraph (4) of Code Section 48-8-101 and therefore receive payment of equalization amounts under this article as provided for under this article. The commissioner shall distribute to the governing authority of the county each month the net sales and use tax remaining after payment of equalization amounts to the qualified municipalities.

(e)(1) As used in this subsection, the term:

(A) "Equalization amount" means for a qualified municipality the product of the equalization millage times the net homestead digest for that qualified municipality.

(B) "Equalization millage" means for each qualified municipality the product of the homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section times the difference between the unincorporated county millage rate and the incorporated county millage rate for that qualified municipality.

(C) “Incorporated county millage rate” means the millage rate for all ad valorem taxes for county purposes levied by the county in each of the qualified municipalities in the county.

(D) “Net homestead digest” means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of the qualified municipality located in the county remaining after all other homestead exemptions are applied.

(E) “Total homestead digest” means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(F) “Unincorporated county millage rate” means the millage rate for all ad valorem taxes for county purposes levied by the county in the unincorporated areas of the county.

(2) For illustration purposes, a hypothetical example of the calculation of the equalization amount is provided below.

First, calculate the homestead factor in accordance with division (c)(2)(B)(i) of this Code section as follows:

(A) Capital factor certified by county as required by subsection (d) of this Code section	0.150
(B) Net amount of sales and use tax collected in the special district pursuant to this article for the previous calendar year	\$50 million
(C) Taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied	\$100 million
(D) Calculation of homestead factor using figures above = $[(1-.0150)(\$50 \text{ million}/\$100 \text{ million})]$.425

Next, calculate the equalization amount in accordance with paragraph (1) of this subsection as follows:

(E) Unincorporated county millage rate	15.0 mills
(F) Minus the incorporated county millage rate for qualified municipality “Y”	(10.0 mills)
Difference:	= 5.0 mills

(G) Times homestead factor (calculated above)	x .425
(H) Equals the equalization millage:	= 2.125 mills
(I) Times net homestead digest for qualified municipality "Y"	\$200 million
(J) Equals the equalization amount payable to municipality "Y"	\$425,000.00

(3) In the event the total amount payable in a calendar year to all existing municipalities as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus the total equalization amount payable to all qualified municipalities in the special district exceeds the capital outlay proceeds calculated based on a maximum capital factor of 0.200, the commissioner shall pay to the governing authority of each qualified municipality a share of such proceeds calculated as follows:

(A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200;

(B) Subtract the amount certified by the county as payable to existing municipalities pursuant to subparagraph (d)(2)(B) of this Code section;

(C) The remaining amount equals the portion of the capital outlay proceeds that may be used by the commissioner to pay equalization amounts to qualified municipalities.

The commissioner shall calculate each qualified municipality's share of such remaining amount by dividing the net homestead digest for each qualified municipality by the total homestead digest for all municipalities.

(4) In the event the incorporated county millage rate for a qualified municipality is greater than the unincorporated county millage rate, no payment shall be due from the governing authority of the qualified municipality to the governing authority of the county.

(5) In the event the amount of capital outlay proceeds exceeds the sum of the equalization amounts due all qualified municipalities plus the total amount certified under subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the commissioner shall distribute to each qualified municipality a portion of such excess equal to the net homestead digest for such municipality divided by the total homestead digest.

(6) If any qualified municipality is located partially in the county then only that portion so located shall be considered in the calculations contained in this subsection. (Code 1981, § 48-8-104, enacted by

Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 4; Ga. L. 2007, p. 309, § 7/HB 219; Ga. L. 2007, p. 598, § 3/HB 264; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 23/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “defined in Code Section 48-8-2” for “defined by paragraph

(5.1) of Code Section 48-8-2” in the second sentence of subsection (a).

JUDICIAL DECISIONS

Amendment to Homestead Option Sales and Use Tax not payment of gratuity. — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a) because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay pro-

ceeds the legislature determined the city’s residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the geographical boundaries of the county in expending HOST revenues for capital outlay projects that benefited the special tax district. *DeKalb County v. Perdue*, 286 Ga. 793, 692 S.E.2d 331 (2010).

48-8-107. Property ordered by and delivered to purchaser at point outside geographical area of special district in which tax imposed.

No sales and use tax provided for in Code Section 48-8-102 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this article regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-107, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2012, p. 580, § 20/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety” for “Inter-

state Commerce Commission or the Georgia Public Service Commission” at the end of this Code section.

ARTICLE 3
COUNTY SALES AND USE TAXES

PART 1

COUNTY SPECIAL PURPOSE LOCAL OPTION SALES TAX

48-8-110.1. Authorization for county special purpose local option sales tax; subjects of taxation; applicability to sales of motor fuels and food and beverages.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3. (Code 1981, § 48-8-110, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1989, p. 62, § 11; Ga. L. 1991, p. 87, § 4; Ga. L. 1996, p. 1, § 4; Code 1981, § 48-8-110.1, as redesignated by Ga. L. 2004, p. 69, § 8; Ga. L. 2007, p. 309, § 8/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 24/HB 1221.)

The 2010 amendment, effective January 1, 2011, in subsection (c), substituted “defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3” for “defined by paragraph (5.1) of Code Section 48-8-2 and shall be applicable to the sale of food and beverages as provided for

in division (57)(D)(i) of Code Section 48-8-3”.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Gov-

ernment,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-113. Administration and collection by commissioner; application; deduction to dealers.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer’s liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner’s agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-113, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 815, § 3; Ga. L. 1992, p. 2998, § 2; Ga. L. 2004, p. 69, § 12; Ga. L. 2007, p. 309, § 9/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 25/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “defined in Code Section 48-8-2” for “defined by paragraph (5.1) of Code Section 48-8-2” in the second sentence.

48-8-117. Inapplicability of tax to certain sales of tangible personal property outside taxing county.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of

Public Safety. (Code 1981, § 48-8-117, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 2012, p. 580, § 21/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety” for “Inter-

state Commerce Commission or the Georgia Public Service Commission” at the end of this Code section.

48-8-121. Use of proceeds; issuance of general obligation debt.

Law reviews. — For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

JUDICIAL DECISIONS

Cited in *Anti-Landfill Corp. v. North Am. Metal Co., LLC*, 299 Ga. App. 509, 683 S.E.2d 88 (2009).

48-8-122. Record of projects on which tax proceeds are used; annual reporting and newspaper publication of report.

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this part or under Article 4 of this chapter shall maintain a record of each and every project for which the proceeds of the tax are used. Not later than December 31 of each year, the governing authority of each local government receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such local government and in a prominent location on the local government website, if such local government maintains a website, a simple, nontechnical report which shows for each project or purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, amounts expended in the current year, any excess proceeds which have not been expended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year. In the case of road, street, and bridge purposes, such information shall be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost if it is not the original estimated cost, and the total amounts expended in prior years and the current year for all such projects and not a separate enumeration of such information with respect to each such individual road, street, or bridge project. The report shall also include a statement of what corrective action the local government intends to implement with respect to each project which is

underfunded or behind schedule. (Code 1981, § 48-8-123, enacted by Ga. L. 2004, p. 69, § 21; Ga. L. 2012, p. 954, § 2/SB 332.)

The 2012 amendment, effective July 1, 2012, in the second sentence, inserted “and in a prominent location on the local government website, if such local government maintains a website”, deleted “and” following “prior years,” and added “, any excess proceeds which have not been ex-

pended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year”; and deleted “and a statement of any surplus funds which have not been expended for a project or purpose” from the end of the last sentence.

48-8-123. Modification of projects approved by referendum which have become infeasible in connection with county special purpose local option sales and use tax.

(a) For purposes of this Code section, the term “infeasible” means that the project has, in the judgment of the governing authority as expressed in the resolution or ordinance required by subsection (b) of this Code section, become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the citizens of the special district or the municipality.

(b)(1) Notwithstanding any other provision of this part to the contrary, if the tax authorized by this part has been imposed within a special district for a purpose or purposes authorized by subsection (a) of Code Section 48-8-111 and one or more projects authorized therein become or are determined to be infeasible, then the provisions of this Code section shall apply. However, this Code section shall not apply until and unless the governing authority or governing authorities specified under paragraph (2) of this subsection adopt a resolution or ordinance determining that such project or projects for which the levy has been approved have become infeasible in accordance with paragraph (2) of this subsection.

(2)(A) If a project that has become infeasible is a project for which the county is responsible, an ordinance or resolution of the county shall be required determining that the project has become infeasible.

(B) If a project that has become infeasible is a municipal project, an ordinance or resolution of the municipality responsible for the project shall be required determining that the project has become infeasible. Upon its approval by the municipality, such ordinance or resolution shall be transmitted to the governing authority of the county. The county governing authority shall rely on the determination by the municipality that the municipal project has become infeasible.

(C) If a project that has become infeasible is a joint project of the county or a county authority and one or more municipalities or a

joint project of two or more municipalities, an ordinance or resolution of all of the jurisdictions involved in the joint project shall be required determining that the project has become infeasible.

(3) If the governing authority desiring to determine that a project is infeasible has incurred or entered into financing for such project, whether through an intergovernmental contract, a multiyear lease or purchase contract under Code Section 36-60-13, or other form of indebtedness, no such ordinance or resolution shall be adopted until the governing authority discharges in full the obligation incurred or provides for the defeasance of such obligation.

(c) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the tax shall continue to be imposed for the same period of time and for the raising of the same amount of revenue as originally authorized. Subject to approval in a referendum required by subsection (d) of this Code section, the county, or any municipality if the infeasible project is a project owned or operated by the municipality, or those entities that are part of a joint project, may expend the previously collected and future proceeds of the tax, or such portion thereof as was intended for the purpose that has been determined to be infeasible if the tax were imposed for more than one purpose, to reduce any general obligation indebtedness of the affected jurisdiction within the special district other than indebtedness incurred pursuant to this part, or by paying such proceeds into the general fund of the county or municipality to be used for the purpose of reducing ad valorem taxes, or both. In the event of a joint project in which there is an intergovernmental agreement apportioning the project, the proceeds shall be divided among the entities to such joint agreement according to such apportionment. In the event of a joint project in which there is no agreement apportioning the project, the proceeds shall be divided equally among the entities to the joint project.

(d)(1) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the governing authority of the county shall notify the county election superintendent by forwarding to the superintendent a copy of a resolution or ordinance calling for the modification of the purpose for which proceeds of the tax authorized by this part may be expended. Such ordinance or resolution shall specify the modified purpose for which the balance of proceeds of the tax are to be used and an estimate of the amount of the proceeds available to be used for the modified purpose.

(2) Upon receipt of the resolution or ordinance required by this subsection, the election superintendent shall issue the call for an election for the purpose of submitting to the voters of the county within the special district the question of modifying the project or projects for which the proceeds of the levy may be expended. The

election superintendent shall issue the call and shall conduct the election, in conjunction with the next election held, to submit to the electors of the special district the imposition of a tax under this part and shall conduct the election in the manner specified in subsection (b) of Code Section 48-8-111.

(3) The ballot submitting a question of the approval of the modified purpose for a levy previously approved by the electors of the county within the special district as authorized by this Code section shall have written or printed thereon the following:

- “() YES Shall the capital outlay project consisting of _____ approved for use of proceeds of the special 1 percent sales and use tax imposed in the special district of _____ County in a referendum on _____ be modified so as to authorize use of such proceeds for the purpose of (reducing debt, reducing ad valorem taxes, or reducing debt and ad valorem taxes) of the (county) (municipality)?”

(4) If there are multiple projects to be submitted to the electors for approval of modified purpose, there shall be one question for all projects of the county or its authorities, one question for all projects of municipalities, and one question for joint projects.

(5) All persons desiring to vote in favor of modifying the project or projects shall vote “Yes,” and all persons opposed to modifying the project or projects shall vote “No.” If more than one-half of the votes cast are in favor of modifying the project or projects, then the proceeds of the tax imposed as provided in this part shall be used for such modified purpose; otherwise, the proceeds of the tax shall not be used for such modified purpose. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e) This Code section shall not apply to a board of education which levies the sales tax for educational purposes pursuant to Part 2 of this article and Article VIII, Section VI, Paragraph IV of the Constitution. (Code 1981, § 48-8-123, enacted by Ga. L. 2011, p. 294, § 1/HB 240.)

Effective date. — This Code section became effective May 11, 2011.

48-8-124. Enforcement.

The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this part, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person or entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this part. (Code 1981, § 48-8-124, enacted by Ga. L. 2012, p. 954, § 3/SB 332.)

Effective date. — This Code section became effective July 1, 2012.

PART 2**SALES TAX FOR EDUCATIONAL PURPOSES****48-8-141. Manner of imposition of tax; report.**

Except as otherwise expressly provided in Article VIII, Section VI, Paragraph IV of the Constitution of Georgia, the sales tax for educational purposes which may be levied by a board of education of a county school district or concurrently by the board of education of a county school district and the board of education of each independent school district located within such county shall be imposed and levied by such board or boards of education and collected by the commissioner on behalf of such board or boards of education in the same manner as provided for under Part 1 of this article and the provisions of Part 1 of this article in particular, but without limitation, the provisions regarding the authority of the commissioner to administer and collect this tax, retain the 1 percent administrative fee, and promulgate rules and regulations governing this tax shall apply equally to such board or boards of education. The report required pursuant to Code Section 48-8-122 shall be applicable; provided, however, that in addition to posting such report in a newspaper of general circulation as required by such Code section, such report may be posted on the searchable website provided for under Code Section 50-6-32. (Code 1981, § 48-8-141, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3; Ga. L. 2010, p. 906, § 1/HB 1013.)

The 2010 amendment, effective July 1, 2010, deleted a comma following “located within such county” near the middle of the first sentence, and added the last sentence.

ARTICLE 3A

UNIFORM SALES AND USE TAX ADMINISTRATION

48-8-161. Definitions.

As used in this article, the term:

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the Streamlined Sales and Use Tax Agreement.

(3) “Certified automated system” means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(4) “Certified service provider” means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller’s sales tax functions.

(5) “Model 1 seller” means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(6) “Model 2 seller” means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(7) “Model 3 seller” means seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(8) “Model 4 seller” means a seller that is not a “Model 1 seller”, a “Model 2 seller”, or a “Model 3 seller.”

(9) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(10) “Sales tax” means the taxes levied under this chapter.

(11) "Seller" means any person making sales, leases, or rentals of personal property or services.

(12) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) "Use tax" means the taxes levied under this chapter. (Code 1981, § 48-8-161, enacted by Ga. L. 2004, p. 410, § 8; Ga. L. 2010, p. 662, § 26/HB 1221.)

The 2010 amendment, effective January 1, 2011, added paragraph (1); redesignated former paragraphs (1) through (3) as present paragraphs (2) through (4), respectively; added paragraphs (5) through (8); redesignated former paragraphs (4) through (8) as present para-

graphs (9) through (13), respectively; and, in paragraph (12), substituted "the United States, the District of Columbia, and the Commonwealth of Puerto Rico" for "the United States and the District of Columbia".

48-8-167. Member of Streamlined Sales Tax Governing Board.

The Georgia members of the Streamlined Sales Tax Governing Board shall be a member of the House of Representatives appointed by the Speaker of the House of Representatives, a member of the Senate appointed by the President Pro Tempore of the Senate, and a designee of the commissioner. (Code 1981, § 48-8-167, enacted by Ga. L. 2010, p. 662, § 27/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, Code

Section 48-7-167, as enacted by Ga. L. 2010, p. 662, § 27, was redesignated as Code Section 48-8-167.

ARTICLE 4

WATER AND SEWER PROJECTS AND COSTS TAX

48-8-200. Definitions.

As used in this article, the term:

(1) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(2) "Dealer" means a dealer as defined in Code Section 48-8-2.

(3) “Municipality” means a municipality in which the average waste-water flow of such municipality is not less than 85 million gallons per day.

(4) “Water and sewer projects and costs” means:

(A) Any capital outlay project or projects for the development, storage, treatment, purification, or distribution of water;

(B) Any capital outlay project or projects for storm-water and sewage collection and disposal systems;

(C)(i) With respect to any project or projects provided for under subparagraph (A) or (B) of this paragraph:

(I) Any cost of project or cost of any project as defined under paragraph (3) of Code Section 50-23-4; and

(II) Any maintenance and operation costs.

(ii) In no event shall any expenditure of tax proceeds pursuant to this subparagraph exceed annually an amount equal to the annual debt service payments of such municipality with respect to revenue bond indebtedness incurred for drinking water projects and storm-water and sewage collection and disposal projects; or

(D) Any combination of any of the foregoing. (Code 1981, § 48-8-200, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 28/HB 1221.)

The 2010 amendment, effective January 1, 2011, deleted “paragraph (3) of” preceding “Code Section 48-8-2” in paragraph (2).

48-8-201. Intergovernmental contract for distribution of tax proceeds; approval of referendum by voters; cap on aggregate amount of tax.

(a)(1) In any county in which the provisions of paragraph (2) of subsection (a) of Code Section 48-8-6 will be applicable if the tax under Part 1 of Article 3 of this chapter is imposed pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, or a combination of such projects, the governing authority of a municipality, the majority of which is located wholly or partially in such county, may deliver or mail a written copy of a resolution of such municipal governing authority calling for the imposition by the county of the tax under Part 1 of Article 3 of this chapter pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a

water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs, or any combination thereof.

(2) Within ten days following the date of delivery of such resolution to the governing authority of such county, the governing authorities of such county and municipality may enter into an intergovernmental contract as authorized by Article IX, Section III of the Constitution which shall specify the allocation of the proceeds of the tax between such county and municipality according to the ratio the population of such municipality bears to the population of such county according to the United States decennial census of 2000 or any future such census so that such municipality's share of the total net proceeds shall be the percentage of the total population of such municipality divided by the total population of such county. Such intergovernmental contract shall specify that the proceeds allocated to the municipality shall only be expended for water and sewer projects and costs.

(3) Immediately following the entering into of the intergovernmental contract under paragraph (2) of this subsection, the governing authority of such county may select the next practicable date authorized under Code Section 21-2-540 for conducting a special election on the question of imposing such tax under Part 1 of Article 3 of this chapter. The governing authority of such county shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution of the governing authority of such municipality calling for the imposition of the tax in such county. Following receipt of the resolution, the election superintendent shall issue the appropriate call for an election for the purpose of submitting the question of the imposition of the tax to the voters of such county in the manner specified in Code Section 48-8-111. If approved in such referendum, the tax shall be levied and imposed as provided in this Code section and Part 1 of Article 3 of this chapter.

(b) If the governing authority of the county takes no action under paragraph (2) or (3) of subsection (a) of this Code section, it shall provide notice thereof by resolution to the governing authority of the municipality not later than ten days following the date of delivery of such municipality's resolution to the county under subsection (a) of this Code section. Upon receipt by the governing authority of the municipality of such county resolution or if timely notice of no action is not provided by the governing authority of the county to the governing authority of the municipality or if the county referendum is conducted but is not approved by the voters, the governing authority of any municipality in this state may, subject to the requirement of referendum approval and the other requirements of this article, immediately commence proceedings to seek to impose within the municipality a

special sales and use tax for a limited period of time for the purpose of funding water and sewer projects and costs. Any tax imposed under this article shall be at the rate of 1 percent. Except as otherwise provided in this article, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.

(c) In the event a tax imposed under this article is imposed only by the municipality:

(1) No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to:

(A) Sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2;

(B) The sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3;

(C) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold, notwithstanding paragraph (70) of Code Section 48-8-3; and

(D) The furnishing for value to the public of any room or rooms, lodgings, or accommodations which is subject to taxation under Article 3 of Chapter 13 of this title; and

(2) A tax imposed under this article shall not apply to the sale of motor vehicles.

(d) On and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent. (Code 1981, § 48-8-201, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 10/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 29/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “paragraph (2) of subsection (a)” for “paragraph (2) of subsection (b)” near the beginning of the first sentence of paragraph (a)(1); substituted “defined in Code Section 48-8-2” for “defined by paragraph (5.1) of Code Section 48-8-2” in subparagraph (c)(1)(A); and, in subparagraph (c)(1)(B), substituted “food and food ingredients and alcoholic beverages” for “food and beverages”, and de-

leted “division (57)(D)(i) of” preceding “Code Section 48-8-3”.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-203. Imposition of tax following approval; termination of tax.

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective with respect to and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner so that it will be received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the municipality net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No municipality shall impose at any time more than a single 1 percent tax under this article.

(2) A municipality in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as authorized by this article upon the termination of the tax then in effect; and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall not be conducted more than three times; shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-202 and shall be solely within the discretion of the governing authority of the municipality without regard to any requirement of county participation otherwise specified

under subsection (a) of Code Section 48-8-201. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a municipality is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article which has been renewed three times under paragraph (2) of this subsection, a municipality shall not be authorized to initiate proceedings for the reimposition of a tax under this article or to reimpose such tax. (Code 1981, § 48-8-203, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 30/HB 1221; Ga. L. 2010, p. 1163, § 6/HB 1069.)

The 2010 amendments. — The first 2010 amendment, effective June 4, 2010, substituted “more than three times” for “more than two times” in the second sentence of paragraph (c)(2); and substituted “renewed three times” for “renewed two times” in paragraph (c)(3). The second 2010 amendment, effective January 1, 2011, substituted “80 days” for “70 days” in paragraph (a)(1).

48-8-204. Administration and collection of tax; deduction.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the municipality imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer’s liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner’s agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-204, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309,

§ 11/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 31/HB 1221.)

The 2010 amendment, effective January 1, 2011, substituted “defined in Code Section 48-8-2” for “defined by paragraph

(5.1) of Code Section 48-8-2” in the second sentence.

48-8-208. No tax on products ordered and delivered outside geographical area of municipality.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the municipality in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-208, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2012, p. 580, § 22/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety” for “Federal

Highway Administration or the Georgia Public Service Commission” at the end of this Code section.

ARTICLE 5

SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX

Effective date. — Part 1 of this article became effective June 2, 2010. Part 2 of this article became effective January 1, 2011.

§ 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Transportation Investment Act of 2010.’”

Editor’s notes. — Ga. L. 2010, p. 778,

PART 1

IN GENERAL

48-8-240. Findings; purpose.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The General Assembly finds that the design and construction of transportation projects is a critical local government service for which adequate funding is not presently available. Many transportation projects cross multiple jurisdictional boundaries and must be coordinated in their design and construction. The General Assembly finds that the most efficient means to coordinate and fund such projects is

through the creation of special districts that correspond with the boundaries of existing regional commissions. The purpose of this article is to provide for special districts that will enable the coordinated design and construction of transportation projects that will develop and promote the essential public interests of the state and its citizens at the state, regional, and local levels. The General Assembly intends through the creation of such special districts to enable the citizens within each district to decide in an election whether to authorize the imposition of a special district transportation sales and use tax to fund the projects on an investment list collaboratively developed by the affected local governments and the state. This article shall be construed liberally to achieve its purpose. (Code 1981, § 48-8-240, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-241. Creation of special districts; tax rate.

(a) There are created within this state 12 special districts. The geographical boundary of each special district shall correspond with and shall be coterminous with the geographical boundary of the applicable region of the 12 regional commissions provided for in subsection (f) of Code Section 50-8-4.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a special district, subject to the requirement of referendum approval and the other requirements of this article, a special sales and use tax shall be imposed within the special district for a period of ten years which tax shall be known as the special district transportation sales and use tax.

(c) Nothing in this article shall be construed as limiting the establishment of a fund or funds which would provide at least 20 years of maintenance and operation costs from proceeds of the special district transportation sales and use tax used to construct, finance, or otherwise develop transit capital projects; provided, however, that the Metropolitan Atlanta Rapid Transit Authority, created by an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, shall not be authorized to use any proceeds from the special district transportation sales and use tax for expenses of maintenance and operation of such portions of the transportation system of such authority in existence on January 1, 2011.

(d) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale; or

(5) For motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit.

The tax imposed pursuant to this article shall only be levied on the first \$5,000.00 of any transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3. (Code 1981, § 48-8-241, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, in the concluding paragraph, in the last sentence, a comma was substituted for a semicolon following “provided”, “food ingredients” was substituted for “beverages”, and “paragraph (57)” was substituted for “division (57)(D)(i)”.

Law reviews. — For article, “Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-8-242. Definitions.

As used in this article, the term:

(1) “Commission” means the Georgia State Financing and Investment Commission;

(2) “Cost of project” means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project of the special district or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for

any project of the special district or for any facilities related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project of the special district;

(C) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project of the special district;

(D) All expenses for inspection of any project of the special district;

(E) All fees of any type charged to the special district in connection with any project of the special district;

(F) All expenses of or incidental to determining the feasibility or practicability of any project of the special district;

(G) All costs of plans and specifications for any project of the special district;

(H) All costs of title insurance and examinations of title with respect to any project of the special district;

(I) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(J) Administrative expenses of the special district and such other expenses as may be necessary or incidental to any project of the special district or the financing thereof; and

(K) The establishment of a fund or funds or such other reserves as the commission may approve with respect to the financing and operation of any project of the special district.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project of the special district and may be paid or reimbursed as otherwise authorized by this article.

(3) "County" means any county created under the Constitution or laws of this state.

(4) "Dealer" means a dealer as defined in paragraph (8) of Code Section 48-8-2.

(5) "Director" means the director of planning provided for in Code Section 32-2-43.

(6) "LARP factor" means the sum of one-fifth of the ratio between the population of a local government's jurisdiction and the total population of the special district in which such local government is located plus four-fifths of the ratio between the paved and unpaved centerline road miles in the local government's jurisdiction and the total paved and unpaved centerline road miles in the special district in which such local government is located.

(7) "Local government" means any municipal corporation, county, or consolidated government created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Metropolitan planning organization" or "MPO" means the policy board of an organization created and designated to carry out the metropolitan transportation planning process as defined in 23 C.F.R. Section 450.

(9) "Municipal corporation" means any incorporated city or town in this state.

(10) "Project" means, without limitation, any new or existing airports, bike lanes, bridges, bus and rail mass transit systems, freight and passenger rail, pedestrian facilities, ports, roads, terminals, and all activities and structures useful and incident to providing, operating, and maintaining the same. The term shall also include direct appropriations to a local government for the purpose of serving as a local match for state or federal funding.

(11) "Regional transportation roundtable" or "roundtable" means a conference of the local governments of a special district created pursuant to this article held at a centralized location within the district as chosen by the director for the purpose of establishing the investment criteria and determining projects eligible for the investment list for the special district. The regional transportation roundtable shall consist of the chairperson, sole commissioner, mayor, or chief executive officer of the county governing authority from each county in the special district. In the event any county in the special district has a consolidated government, the consolidated government shall elect a second elected member of the county consolidated government to the regional roundtable. In counties without a consolidated government, the second member of the regional roundtable from that county shall be one mayor elected by the mayors of the county; provided, however, that, in the event such an election ends in

a tie, the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census shall be deemed to have been elected as a representative unless that mayor is already part of the roundtable. In such case, the mayor of the municipal corporation with the second highest population shall be deemed to have been elected as a representative. If a county has more than 90 percent of its population residing in municipal corporations, such county shall have the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census as an additional representative. The regional transportation roundtable shall elect five representatives from among its members to serve as an executive committee. The executive committee shall also include two members of the House of Representatives selected by the chairperson of the House Transportation Committee and one member of the Senate selected by the chairperson of the Senate Transportation Committee. Each member of the General Assembly appointed to the executive committee shall be a nonvoting member of the executive committee and shall represent a district which lies wholly or partially within the region represented by the executive committee. The executive committee shall not have more than one representative from any one county, but any member of the General Assembly serving on the executive committee shall not count as a representative of his or her county.

(12) "Special Regional Transportation Funding Election Act" means an Act specifically and exclusively enacted for the purpose of ordering that a referendum be held for the reimposition of the special district transportation sales and use tax within the region that includes the districts, in their entirety or any portion thereof, of the members from a local legislative delegation in the General Assembly. A majority of the signatures of the legislative delegation for a majority of the counties within the region shall be required for the bill to be placed upon the local calendar of each chamber. This method shall be exclusively used for this purpose and no other bill shall be placed or voted upon on the local calendar utilizing this method of qualification for placement thereon. This Act shall be treated procedurally by the General Assembly as a local Act and all counties within the region shall receive the legal notice requirements of a local Act.

(13) "State-wide strategic transportation plan" means the official state-wide transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

(14) "State-wide transportation improvement program" means a state-wide prioritized listing of transportation projects as defined in paragraph (7) of subsection (a) of Code Section 32-2-22.

(15) "Transportation improvement program" means a prioritized listing of transportation projects as defined in paragraph (8) of subsection (a) of Code Section 32-2-22. (Code 1981, § 48-8-242, enacted by Ga. L. 2010 p. 778, § 6/HB 277 and Ga. L. 2010, p. 818, § 3/SB 520.)

Effective date. — This Code section became effective June 3, 2010. See the Code Commission note regarding the effect of these enactments.

Code Commission notes. — The enactment of this Code section by Ga. L. 2010, p. 778, § 6, irreconcilably conflicted

with and was treated as superseded by Ga. L. 2010, p. 818, § 3. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2010, "paragraph (8)" was substituted for "paragraph (3)" in paragraph (4).

48-8-243. Criteria for development of investment list of projects and programs; report; gridlock.

(a) Within 60 calendar days following approval by the Governor of the state-wide strategic transportation plan, the State Transportation Board shall consider the state-wide strategic transportation plan in accordance with the provisions of subsection (c) of Code Section 32-2-22. Upon approval of the state-wide strategic transportation plan by the State Transportation Board, the director shall provide in written form to the local governments and any MPO's within each special district across the state recommended criteria for the development of an investment list of projects and programs. The establishment of such criteria shall comport with the investment policies provided in subsection (a) of Code Section 32-2-41.1 and the state-wide strategic transportation plan. The recommended criteria shall include performance goals, allocation of investments in alignment with performance, and execution of projects. The state fiscal economist shall develop an estimate of the proceeds of the special district transportation sales and use tax for each special district using financial data supplied by the department. Such estimate shall include reasonable ranges of anticipated growth, if any. The director shall include such estimates and ranges in the recommended criteria for developing the draft investment list. Any local government or MPO desiring to submit comments on the recommended criteria shall make such submission to the director no later than September 30, 2010. On or before November 10, 2010, the mayors in each county shall elect the mayoral representative to the regional transportation roundtable and notify the county commission chairperson and the director of that mayor's name. The director shall accept comments from any MPO located wholly or partially within each special district in finalizing the recommended district criteria in a written report on or before November 15, 2010. Such report shall also include notice of the date, time, and location of the first regional transportation roundtable for each special district for the purpose of

considering the recommended district criteria and for electing members of the executive committee for each special district. Any amendment to the recommended criteria, approval of such criteria, and election of the executive committee shall be enacted by a majority vote of the representatives present at the roundtable meeting. Upon approval of the criteria, the director shall promptly deliver a report to the commissioner of transportation, local governments, any MPO located wholly or partially within each special district and the members of the General Assembly whose districts lie wholly or partially within each special district detailing the criteria approved by the roundtable.

(b) With regard to any area of a special district that is not part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such area, the local governments in such area may submit projects to the director to assemble a list of example investments for such special district that comport with the special district's investment criteria. With regard to any area of a special district that is part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such area, the local governments may submit projects to the director and to the MPO for the director to use to assemble a list of example investments for such special district that comport with the special district's investment criteria. The list of example investments for each special district shall not be required to be fiscally constrained within the budget of the revenues projected to be generated by each special district's sales and use tax and shall be submitted to the executive committee for each regional transportation roundtable for consideration. The executive committee in collaboration with the director shall choose from the list of example investments to create the draft investment list, which shall be approved by majority vote of the executive committee. Such draft investment list shall be fiscally constrained within the ranges of revenues projected to be generated by the special district sales and use tax, as determined by the state fiscal economist. The special district's draft investment list as approved by the executive committee shall be considered by the regional transportation roundtable. The director shall deliver the draft investment list to the local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district not later than August 15, 2011. The director shall include in the draft investment list a statement of the specific public benefits to be expected upon the completion of each project on the investment list and how the special district's investment criteria are furthered by each project. Examples of specific public benefits include,

but are not limited to, congestion mitigation, increased lane capacity, public safety, and economic development. The director shall include in such delivery notice of the date, time, and location of each district's executive committee meeting and final regional transportation roundtable. Prior to holding the final regional transportation roundtable, the executive committee shall hold, after proper notice to the public, at least two public meetings in the region for the purpose of receiving public comment on the draft regional investment list. The executive committee shall prepare and deliver to all members of the regional roundtable and the director a summary of the public comment on the regional investment list. The local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within such special district may submit comments on the draft investment list addressed to both the director and the executive committee no later than two weeks prior to the dates of the final regional transportation roundtable and the executive committee meeting, respectively, for the special district. At the final regional transportation roundtable, the draft investment list approved by the executive committee shall be considered for approval by a majority vote of the representatives present at the roundtable. Should the roundtable reject the draft investment list approved by the executive committee, the roundtable then may negotiate amendments that meet the district's investment criteria to the draft investment list, which shall be chosen from the list of example investments for each special district, each voted on separately and requiring a majority vote of the representatives present at the roundtable for approval. Upon consideration of all offered amendments, upon motion, the roundtable shall vote as to the approval of the amended draft list, requiring a majority vote of the representatives present at the roundtable. The approved investment list, if any, shall be provided to the director. On or before October 15, 2011, the director shall deliver such list to the commission, the commissioner of transportation, the executive director of the Georgia Regional Transportation Authority, local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district. The approved investment list shall include:

- (1) The specific transportation projects to be funded;
- (2) The anticipated schedule of such projects;
- (3) The approximate cost of such projects; and
- (4) The estimated amount of net proceeds to be raised by the tax including the amount of proceeds to be distributed to local governments pursuant to subsection (e) of Code Section 48-8-249.

If a roundtable does not approve the original draft investment list or an amended draft investment list on or before October 15, 2011, then a

special district gridlock shall be declared by the director and no election shall be held in such special district. The question of levying the tax shall not be submitted to the voters of the special district until after 24 months immediately following the month in which the special district gridlock was reached.

(c) In the event a special district gridlock is declared, the local governments in such special district shall be required to provide a 50 percent match for any local maintenance and improvement grants by the Department of Transportation. Such 50 percent match requirement shall remain in place until the special district roundtable approves an investment list meeting the special district's investment criteria and an election is held within the special district on the levy of the special district transportation sales and use tax. (Code 1981, § 48-8-243, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

PART 2

ELECTION, IMPOSITION, AND PROCEDURES

Effective date. — This part became effective January 1, 2011.

48-8-244. Election; ballot.

(a) Simultaneously with the director's delivery of the approved investment list in accordance with subsection (b) of Code Section 48-8-243, the roundtable shall deliver a notice to the election superintendents of each county within the respective special districts. Upon receipt of the notice, the election superintendents shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters within each special district. The election superintendents shall issue the call and shall conduct the election in the manner authorized under Code Section 21-2-540. The first election shall be held on the date of the general state-wide primary in 2012. The election superintendents shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organs of their respective counties.

(b) The ballot submitting the question of the levy of the special district transportation tax authorized by this article to the voters within each special district shall have written or printed thereon the following:

“() YES Shall _____ County's transportation system and the transportation network in this region and the state be improved by providing for a 1 percent

“() NO special district transportation sales and use tax for the purpose of transportation projects and programs for a period of ten years?”

(c) All persons desiring to vote in favor of levying the tax shall vote “Yes” and all persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast throughout the entire special district are in favor of levying the tax, then the tax shall be levied as provided in this article; otherwise the tax shall not be levied and the question of levying the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. Each election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. Each election superintendent shall canvass the returns from his or her county, declare the result of the election in that county, and certify the result to the Secretary of State. The Secretary of State shall compile the results from each county in the special district, declare the result of the election in the special district, and certify the result to the governing authority of each local government and MPO within the special district and the state revenue commissioner. The expense of the election in each county within each special district shall be paid from funds of each county.

(d) In the event a special district sales and use tax election is held and the voters in a special district do not approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 30 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for at least 24 months and until such time as a special district sales and use tax is approved. In the event the voters in a special district approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 10 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for the duration of the levy of the special district transportation sales and use tax. (Code 1981, § 48-8-244, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-244.1. Effect of special district levy on state allocation of funds under Code Section 32-5-27.

The approval of the levy of the special district transportation sales and use tax in a special district shall not in any way diminish the percentage of funds allocated to a special district or any of the local governments within a special district under the provisions of subsection (c) of Code Section 32-5-27. The amount of funds expended in a special

district shall not be decreased due to the use of proceeds from the special district transportation sales and use tax to construct transportation projects that have a high priority in the state-wide strategic transportation plan. If a special district constructs a project on the approved investment list using proceeds from the special district tax, then the state funding under subsection (c) of Code Section 32-5-27 shall not be diverted to priority projects in other special districts. (Code 1981, § 48-8-244.1, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-245. Collection of tax; cessation of tax.

(a) If the imposition of the special district transportation sales and use tax is approved at the special election, the collection of such tax shall begin on the first day of the next succeeding calendar quarter beginning more than 80 days after the date of the election. With respect to services which are regularly billed on a monthly basis, however, the tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) On the final day of the ten-year period of time specified for the imposition of the tax; or

(2) As of the end of the calendar quarter during which the state revenue commissioner determines that the tax has raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the special district transportation tax.

(c)(1) No more than a single 1 percent tax under this article may be collected at any time within a special district.

(2) Upon the enactment by the General Assembly of a Special Regional Transportation Funding Election Act and the adoption of resolutions by the governing bodies of a majority of the counties within a special district in which a tax authorized by this article is in effect, an election may be held for the reimposition of the tax while the tax is in effect. Proceedings for the development of an investment list and for the reimposition of a tax shall be in the same manner as provided for in Code Section 48-8-243.

(3) Following the expiration of the special district transportation sales and use tax under this article, or following a special election in which voters in a special district rejected the imposition of the tax, upon the passage by the General Assembly of a Special Regional Transportation Funding Election Act and the adoption of resolutions

by the governing bodies of a majority of counties within a special district, an election may be held for the imposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. Such subsequent election shall be held on the date of a state-wide general primary. The development of the investment list for such special district shall follow the dates established in Code Section 48-8-243 with the years adjusted appropriately, and such schedule shall be posted on a website developed by the state revenue commissioner to be used exclusively for matters related to the special district transportation sales and use tax within 30 days of the later of the state revenue commissioner's receipt of notice from the final county governing body required to adopt a resolution or of the passage of the Special Regional Transportation Funding Election Act by the General Assembly. (Code 1981, § 48-8-245, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-246. Collection and administration of tax by state revenue commissioner.

A tax levied pursuant to this article shall be exclusively administered and collected by the state revenue commissioner for the use and benefit of the special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the state revenue commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the state revenue commissioner may rely upon a representation by or in behalf of the special district or the Secretary of State that such a tax has been validly imposed, and the state revenue commissioner and the state revenue commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-246, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-247. Remittance of taxes.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establish-

ment for the period covered by the return in order to facilitate the determination by the state revenue commissioner that all taxes imposed by this article are collected and distributed according to situs of sale. (Code 1981, § 48-8-247, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-248. Disbursement of proceeds.

The proceeds of the tax collected by the state revenue commissioner in each special district under this article shall be disbursed as soon as practicable after collection to the Georgia State Financing and Investment Commission to be maintained in a trust fund and administered by the commission on behalf of the special district imposing the tax. Such proceeds for each special district shall be kept separate from other funds of the commission and shall not in any manner be commingled with other funds of the commission. (Code 1981, § 48-8-248, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-249. Use of proceeds within special district exclusively for projects on approved investment list; contracts.

(a) The proceeds received from the tax authorized by this article shall be used within the special district receiving proceeds of the tax exclusively for the projects on the approved investment list for such district as provided in subsection (b) of Code Section 48-8-243. Authorized uses of tax proceeds in connection with such projects shall include the cost of project defined in paragraph (2) of Code Section 48-8-242.

(b) The commission shall be responsible for the proper application of the proceeds received from the tax authorized by this article for the approved investment list for each special district. The commission shall delegate the management of the budget, schedule, execution, and delivery of the projects contained in the approved investment list as follows:

(1) The commission shall contract with the Department of Transportation for all transportation projects except bus and rail mass transit systems and passenger rail in any special district the boundaries of which are not wholly contained within a single MPO; and

(2) The commission shall contract with the Georgia Regional Transportation Authority only for projects that are bus and rail mass transit systems and passenger rail within any special district the boundaries of which are wholly contained within a single MPO.

Upon entering into contracts with the Department of Transportation or the Georgia Regional Transportation Authority as provided above, the commission shall dispense funds upon the request of the commissioner

of transportation or the executive director of the Georgia Regional Transportation Authority, which request shall include certification of the completion of the project or project element for which funds are requested. Payment shall be made promptly upon approval by the construction division or the financing and investment division of the commission, and such payments shall not require any other official action by the commission. The use of funds so dispensed shall be subject to review and audit by the construction division and the financing and investment division of the commission and action by the commission upon receipt of complaint or if otherwise warranted. The Department of Transportation and Georgia Regional Transportation Authority shall consult with the commission on at least a quarterly basis regarding the progress and performance in the execution, schedule, and delivery of projects on the approved investment list.

(c) In managing the execution, schedule, and delivery of the projects on the approved investment list for a special district, the Department of Transportation or Georgia Regional Transportation Authority, as appropriate, shall determine whether a project should be designed and constructed by the Department of Transportation, by a local government, or by another public or private entity. In making such determination the following shall be considered:

(1) Whether such project is on the state-wide transportation improvement program, the state-wide strategic transportation plan, or a transportation improvement program;

(2) The type and estimated cost of the project;

(3) The location of the project and whether it encompasses multiple jurisdictions;

(4) The experience of a local government or governments or a public or private entity in designing and constructing such project as set forth in an application in a form to be provided by the commissioner of transportation or the executive director of the Georgia Regional Transportation Authority; and

(5) The recommendation of the MPO, if any, for such special district.

Following the decision, the Department of Transportation, the local government or governments, or another public or private entity as determined under this subsection shall contract for implementing the projects in accordance with applicable state and federal requirements.

(d) The commission shall maintain or cause to be maintained an adequate record-keeping system for each project funded by a special district transportation sales and use tax. An annual audit shall be paid for by each special district and conducted by an independent auditing

firm as selected by the commission. Such audit shall include a schedule which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. Such audit shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The audit report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(e) Twenty-five percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are not coterminous with an MPO. Fifteen percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are wholly contained within a single MPO. Such percentages shall be allocated to each local government by multiplying the LARP factor of each local government by the total amount of funds to be distributed to all the local governments in the special district. Proceeds described in this subsection shall be distributed to the local governments on an ongoing basis as they are received by the commission. Such proceeds shall be used by the local governments only for transportation projects as defined in paragraph (10) of Code Section 48-8-242 and may also serve as the local match as required for state transportation projects and grants. If a special district receives from the tax net proceeds in excess of the investment list approved by the roundtable for the imposition of the tax or in excess of the actual cost of the project or projects on such investment list, then such excess proceeds shall be distributed among the local governments within the special district in accordance with this subsection. (Code 1981, § 48-8-249, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-250. Report.

Not later than December 15 of each year, the state revenue commissioner shall publish, on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245, a simple, nontechnical report which shows for each project in the investment list approved by the director the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year with respect to each such project. The report shall also include a statement of what corrective action the commissioner of transportation and the executive director of the

Georgia Regional Transportation Authority intend to implement with respect to each project which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a project. (Code 1981, § 48-8-250, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-251. Citizens Review Panel; membership; vacancy; recommendations; report.

(a) There is created a Citizens Review Panel for each special district in which voters approved the levy of the special district sales and use tax to be composed of three citizen members appointed by the Speaker of the House of Representatives and two citizen members appointed by the Lieutenant Governor. Each member must be a resident of the special district of which Citizens Review Panel they are appointed to serve.

(b) In the event that any vacancy for any cause shall occur in the membership of the committee, such vacancy shall be filled by an appointment made by the official authorized by law to make such appointment within 45 days of the occurrence of such vacancy.

(c) The panel shall, by majority vote of those members present and voting, elect from their number a chairperson and vice chairperson who shall serve at the pleasure of the panel.

(d) The panel shall meet in regular session at least three days each year either at the state capitol in Atlanta or at such other meeting place within the state and may have such other additional meetings as may be called by the chairperson or by a majority of the members of the panel upon reasonable written notice to all members of the panel. Further, the chairperson of the panel is authorized from time to time to call meetings of subcommittees of the panel which are established by panel policy at places inside or outside the state when, in the opinion of the chairperson, the meetings of the subcommittee are needed to attend properly to the panel's business. A majority of the panel shall constitute a quorum for the transaction of all business. Any power of the panel may be exercised by a majority vote of those members present at any meeting at which there is a quorum.

(e) Members shall receive for each day of actual attendance at meetings of the panel and the subcommittee meetings the per diem and transportation costs prescribed in Code Section 45-7-21, and a like sum shall be paid for each day actually spent in studying the transportation needs of the state or attending other functions as a representative of the panel, not to exceed ten days in any calendar year, but no member shall receive such per diem for any day for which such member receives any other per diem pursuant to such Code section. In addition, members

shall receive actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance and study. Such per diem and expense shall be paid from the funds of the special district's revenues from the special district sales and use tax upon presentation, by members of the panel, of vouchers approved by the chairperson.

(f) The panel shall be charged with review of the administration of the projects and programs included on the approved investment list. The panel may make such recommendations to and require such reports from the Department of Transportation, the Georgia Regional Transportation Authority, any other agency or instrumentality of the state, any political subdivision of the state, and any agency or instrumentality of such political subdivisions as it may deem appropriate and necessary from time to time in the interest of the region.

(g) Upon the completion of a project on the investment list, the panel shall annually review the specific public benefits identified in the investment list to ascertain the degree to which such benefits have been attained. This benefit review report shall be delivered to the director and the state revenue commissioner and shall be published on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245.

(h) Beginning January 1, 2013, and annually thereafter, the panel shall provide a report to the General Assembly of its actions during the previous year. The report shall be available for public inspection on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245. The report shall include, but not be limited to, an update on the progress on each project on the investment list for the region, including the amount of funds spent on each project. (Code 1981, § 48-8-251, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-252. Tax paid in another jurisdiction.

Where a special district transportation sales and use tax under this article has been paid with respect to tangible personal property by the purchaser either in another special district within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The state revenue commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in

another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other sales and use tax levied in the special district. (Code 1981, § 48-8-252, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-253. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-253, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2012, p. 580, § 23/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety” for “Surface Transportation Board or the Georgia Public Service Commission” at the end of this Code section.

48-8-254. “Building and construction materials” defined; inapplicability of tax to certain sales or uses of building and construction materials.

(a) As used in this Code section, the term “building and construction materials” means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters’ approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax. (Code 1981, § 48-8-254, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-255. Authority to promulgate rules and regulations.

Subject to the approval of the House and Senate Transportation Committees, the state revenue commissioner shall have the power and

authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the special district transportation sales and use tax authorized by this article. (Code 1981, § 48-8-255, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-256. Special district tax not subject to allocation or balancing of state and federal funds.

The tax authorized by this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, nor may such proceeds be considered or taken into account in any such allocation or balancing. (Code 1981, § 48-8-256, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

ARTICLE 6

GEORGIA TOURISM DEVELOPMENT

Effective date. — This article became § 3, not codified by the General Assembly, effective July 1, 2011. provides for severability.

Editor's notes. — Ga. L. 2011, p. 302,

48-8-270. Short title.

This article shall be known and may be cited as the “Georgia Tourism Development Act.” (Code 1981, § 48-8-270, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-271. Definitions.

As used in this article, the term:

(1) “Agreement” means a tourism attraction agreement for a tourism attraction project entered into, pursuant to Code Section 48-8-275, on behalf of the Department of Community Affairs and an approved company.

(2) “Approved company” means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other entity that is seeking to undertake a tourism attraction project pursuant to Code Section 48-8-275 and is approved, pursuant to subsection (b) of Code Section 48-8-274, by the Governor and by the governing authority of the city where the tourism attraction project is to be located if within a city and by the governing authority of the county where the tourism attraction project is to be located.

(3) “Approved costs” means:

(A) For new tourism attractions:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a new tourism attraction project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) All costs for construction materials and equipment installed at the new tourism attraction project;

(iv) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a new tourism attraction project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided;

(v) All costs of architectural and engineering services, including but not limited to estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vi) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vii) All costs required for the installation of utilities, including but not limited to water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company; and

(viii) All other costs comparable with those described in this subparagraph; or

(B) For existing tourism attractions, any approved costs otherwise specified in subparagraph (A) of this paragraph; provided, however, that such costs are limited to the expansion only of an existing tourism attraction and not the renovation of an existing tourism attraction.

(4) "Incremental sales and use tax" means those state and local sales and use taxes generated by the tourism attraction project above the amount of such sales and use taxes generated by the previous use of the property on which such project is located except as otherwise provided in Code Section 48-8-278.

(5) “Tourism attraction” means a cultural or historical site; a recreation or entertainment facility; a convention hotel and conference center; an automobile race track with other tourism amenities; a golf course facility with other tourism amenities; marinas and water parks with lodging and restaurant facilities designed to attract tourists to the State of Georgia; or a Georgia crafts and products center. A tourism attraction shall not include the following:

(A) Facilities that are primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters; or

(B) Recreational facilities that do not serve as likely destinations where individuals who are not residents of this state would remain overnight in commercial lodging at the tourism attraction.

(6) “Tourism attraction project” or “project” means the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company. Such term shall not include the renovation of an existing tourism attraction. (Code 1981, § 48-8-271, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-272. Purpose of article; legislative findings.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of this state depend in large measure upon the development of tourism in the state; that it is in the best interest of this state to induce the creation of tourism attractions or expansion of existing tourism attractions within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the sales and use tax refund offered by the State of Georgia to approved companies and preserving and creating sources of tax revenues for the support of public services provided by the state; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation of tourism attraction projects is of paramount importance to the economy of the state, mandating that the provisions of this article are to be liberally construed and applied in order to advance public purposes. (Code 1981, § 48-8-272, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-273. Tourism attractions agreements; execution; 10-year term; sales and use tax refund; administrative regulations.

(a) In the sole discretion of the Governor, in consideration of the execution of the agreement, each approved company shall be granted a sales and use tax refund from the incremental sales and use tax on the sales generated by the approved company and arising at the tourism attraction.

(b) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected.

(c) For all tourism attractions the term of the agreement granting the sales and use tax refund shall be ten years, commencing on the later of:

(1) The final approval of the agreement for purposes of the sales and use tax refund; or

(2) The date the tourism attraction opens for business and begins to collect sales and use taxes.

(d) Any sales and use tax collected by an approved company on sales transacted after final approval but prior to the commencement of the term of the agreement shall be refundable as if collected after the commencement of the term and applied to the approved company's first year's refund after activation of the term and without changing the term.

(e) The total sales and use tax refund allowed to the approved company over the term of the agreement shall be equal to the lesser of the total amount of the incremental sales and use tax liability of the approved company or 25 percent of the approved costs for the tourism attraction project. The incremental sales and use tax refund shall accrue over the term of the agreement in an annual amount equal to the lesser of the incremental sales and use tax liability of the approved company for that year or 2.5 percent of the approved costs.

(f) On or before March 31 of each year during the term of the agreement, an approved company shall file with the Department of Revenue a claim for the incremental sales and use tax refund collected by the approved company and remitted to the Department of Revenue during the preceding calendar year pursuant to subsection (e) of this Code section.

(g) The Department of Revenue, in consultation with the Department of Community Affairs and other appropriate state agencies, shall promulgate administrative regulations and require the filing of a

refund form designed by the Department of Revenue to reflect the intent of this article.

(h) No sales and use tax refund shall be granted to an approved project which is during a tax year simultaneously receiving any other state tax incentive.

(i) Any sales and use tax refund shall be first applied to any outstanding tax obligation of the approved company which is due and payable to the state. (Code 1981, § 48-8-273, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-274. Standards for filing tourism attraction project applications; analysis of projects by independent consultants; conditions of eligibility and approval.

(a) The commissioner of community affairs, in consultation with the Governor and other appropriate state agencies, shall establish standards for the filing of an application for tourism attraction projects by the promulgation of administrative regulations.

(b) An application for a tourism attraction project filed with the Department of Community Affairs shall include, but not be limited to:

(1) Marketing plans for the tourism attraction project that target individuals who are not residents of this state;

(2) A description and location of the tourism attraction project;

(3) Capital and other anticipated expenditures for the tourism attraction project and the anticipated sources of funding for such project;

(4) The anticipated employment and wages to be paid at the tourism attraction project;

(5) Business plans which indicate the average number of days in a year in which the tourism attraction project will be in operation and open to the public; and

(6) The anticipated revenues to be generated by the tourism attraction project.

(c) Following the filing of the application, the Department of Community Affairs shall submit the application to an independent consultant who shall perform an in depth analysis of the proposed project. All costs associated with such analysis shall be paid for by the approved company.

(d) The Governor may, in the Governor's sole discretion, grant approval to the tourism attraction project if the project shall:

- (1) Have approved costs in excess of \$1 million and such project is to be a tourism attraction;
- (2) Have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism attraction project will compete directly with tourism attractions in this state and the amount by which increased state local tax revenues from the tourism attraction project will exceed the refund to be given to the approved company;
- (3) Produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year, including the first year of operation;
- (4) Not adversely affect existing employment in the state;
- (5) For each year following the third year of operation, attract a minimum of 25 percent of its visitors from nonresidents of this state; and
- (6) Meet such other criteria as deemed appropriate by the Governor. (Code 1981, § 48-8-274, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-275. Authority of Department of Community Affairs to enter into agreements with approved companies; required terms and provisions of agreements.

Following approval by the Governor, the Department of Community Affairs shall enter into an agreement with any approved company which may also include as a partner any local development authority, and the terms and provisions of each agreement shall include, but not be limited to:

- (1) The projected amount of approved costs, provided that any increase in approved costs incurred by the approved company and agreed to by the Department of Community Affairs shall apply retroactively for purposes of calculating the carry forward for unused sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-273 for tax years commencing on or after July 1, 2011;
- (2) A date certain by which the approved company shall have completed the tourism attraction project and begun operations. Upon request from any approved company that has received final approval, the Department of Community Affairs shall grant an extension or change, which in no event shall exceed 18 months from the date of final approval, to the completion date as specified in the agreement with an approved company; and

(3) A statement specifying the term of the agreement in accordance with subsection (c) of Code Section 48-8-273. (Code 1981, § 48-8-275, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-276. Failure to abide by terms of agreement.

In the event an approved company fails to abide by the terms of the agreement, then such agreement shall be void and all sales and use tax proceeds which were refunded shall become immediately due and payable back to the state and to the governing authority of any county or municipality whose approval was required under paragraph (2) of Code Section 48-8-271. (Code 1981, § 48-8-276, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-277. Transfer of rights, duties, and obligations to successor company.

An approved company may, in the discretion of the Governor, transfer its rights, duties, and obligations under the agreement to a successor company if the successor company meets the qualifications of an approved company and, upon such approval by the Governor, such successor approved company shall be authorized to receive the sales and use tax refunds for the remaining duration of the agreement if it abides by the terms of the agreement. (Code 1981, § 48-8-277, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-278. Article inapplicable to sales tax levied for educational purposes.

This article shall not apply to the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution. (Code 1981, § 48-8-278, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

CHAPTER 9

MOTOR FUEL AND ROAD TAXES

Article 1

Motor Fuel Tax

Sec.
48-9-3. Levy of excise tax; rate; taxation of motor fuels not com-

monly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales by licensed distributors; exemption of motor fuel used

Sec.

Article 2

Road Tax on Motor Carriers

48-9-10. Refunds of motor fuel taxes, in general; application for refund permit; contents; refunds to persons using gasoline for agricultural purposes; amount; retailers; separate claims; amount; interest.

Sec.

48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.

ARTICLE 1

MOTOR FUEL TAX

48-9-3. Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales by licensed distributors; exemption of motor fuel used for nonhighway purposes; exemption of motor fuel for public mass transit buses.

(a)(1) An excise tax is imposed at the rate of 7 1/2¢ per gallon on distributors who sell or use motor fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

(2) In the event any motor fuels which are not commonly sold or measured by the gallon are used in any motor vehicles on the public highways of this state, the commissioner may assess, levy, and collect a tax upon such fuels, under such regulations as the commissioner may promulgate, in accordance with and measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. Any determination by the commissioner of the power potential equivalent of such motor fuels shall be prima-facie correct. Upon each such quantity of such fuels used upon the public highways of this state, a tax at the same rate per gallon imposed on motor fuel under paragraph (1) of this subsection shall be assessed and collected.

(3) No county, municipality, or other political subdivision of this state shall levy any fee, license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel. Nothing contained in this article shall be construed to prevent a county, municipality, or other political subdivision of this state from levying license fees or taxes upon any business selling motor fuel.

(4) For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision

contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units. As used in this paragraph, the term "compressed natural gas" means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.

(b) No tax is imposed by this article upon or with respect to the following sales by duly licensed distributors:

- (1) Bulk sales to a duly licensed distributor;
- (2) Sales of motor fuel for export from this state when exempted by any provisions of the Constitutions of the United States or this state;
- (3) Sales of motor fuel to a licensed distributor for export from this state;
- (4) Sales of motor fuel to the United States for the exclusive use of the United States when the motor fuel is purchased and paid for by the United States;
- (5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢ per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section and all of the tax imposed by Code Section 48-9-14;
- (6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer distributor;
- (7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no highway use of the fuel at the time of the sale and does not resell the fuel. Consumers of compressed petroleum gas or special fuel who have both highway and nonhighway use of the fuel and resellers of such fuel must be licensed as distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to be considered separately under this exemption.
- (B)(i) In instances where a sale of compressed petroleum gas has been made to an ultimate consumer who has both highway and nonhighway use of that type of motor fuel and no tax has been paid by the distributor on the sale, the consumer shall become licensed as a consumer distributor of that type of motor fuel. After the consumer is licensed as a consumer distributor and if it is demonstrated to the satisfaction of the commissioner that the motor fuel purchased prior to the licensee's becoming licensed as a consumer distributor was used for nonhighway purposes, such sales shall be exempt from the tax imposed by this article; provided, however, that, if at the time of demonstration the

ultimate consumer does not have both highway and nonhighway use of such fuel but it can be demonstrated by the distributor to the satisfaction of the commissioner that the motor fuel was used for nonhighway purposes, the sales shall be exempt from the tax imposed by this article; and

(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt from the motor fuel and road taxes imposed by this article unless: (1) the purchaser is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an exemption certificate has been obtained from the purchaser on forms furnished by the Department of Revenue showing that the purchaser has no highway use of such fuels and is not a reseller of such fuels. Each exemption certificate shall be valid for a period of not more than three years and shall be kept by the distributor as one of the records specified in Code Section 48-9-8. It shall be the responsibility of the purchaser to notify the distributor when the purchaser is no longer qualified for the nonhighway exemption. All applicable taxes must be charged the purchaser until the purchaser is granted a valid distributor's license for that type of motor fuel.

(II) Any such purchaser granted an exemption under subdivision (I) of this division who falsely claims the exemption or fails to rescind the purchaser's exemption certificate to the distributor in writing when he or she is no longer eligible for the exemption shall be deemed a distributor for purposes of taxation and is subject to all provisions of this article relating to distributors. This division in no way shall restrict the option of the purchaser to become licensed as a distributor. If the distributor sells special fuel to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed distributor and has not executed a valid signed exemption certificate, the taxes imposed by this article are due from the distributor and not the purchaser on all sales of that type of fuel to that purchaser;

(8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only. The delivery of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only shall be made directly into the storage receptacle of the heating unit

of the consumer by the licensed distributor. To qualify for this exemption, sales must be delivered into storage receptacles that are not equipped with any secondary withdrawal outlets for the motor fuel;

(9) Sales of dyed fuel oils to a consumer for other than highway use as defined in paragraph (8) of Code Section 48-9-2; or

(10)(A) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for public mass transit vehicles which are owned by public transportation systems which receive or are eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares are routinely charged and which vehicles are used exclusively for revenue generating purposes which motor fuel sales occur at bulk purchase facilities approved by the department.

(B) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a public campus transportation system, provided that such system has a policy which provides for free transfer of passengers from the public transportation system operated by the jurisdiction in which the campus is located; makes the general public aware of such free transfer policy; and receives no state or federal funding to assist in the operation of such public campus transportation system and which motor fuel sales occur at bulk purchase facilities approved by the department.

(C) For purposes of this paragraph, the term "vehicle" or "vehicles" means buses, vans, minibuses, or other vehicles which have the capacity to transport seven or more passengers.

(c) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor for nonhighway purposes is exempt from the tax imposed by this article.

(d) No export from this state shall be recognized as being exempt from tax under paragraphs (2) and (3) of subsection (b) of this Code section unless the exporter informs the seller and the terminal operator of the intention to export and causes to be set out the minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of lading or equivalent documentation under which the motor fuel is transported. In the event that the motor fuel is delivered to any point other than that which is set out on the bill of lading or equivalent documentation, the legal incidence of the tax shall continue to be imposed exclusively upon the exporter who caused the export documentation to be issued and no exemption shall be recognized until suitable proof of exportation has been provided to the commissioner. (Code 1933, § 92-1403, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003,

enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1979, p. 1274, §§ 1, 3; Ga. L. 1980, p. 10, § 30; Ga. L. 1985, p. 1644, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1993, p. 811, § 2; Ga. L. 1993, p. 1502, § 4; Ga. L. 1994, p. 569, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 359, § 2; Ga. L. 2004, p. 425, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 505, § 1/HB 384; Ga. L. 2006, p. 523, § 1/HB 1244; Ga. L. 2008, p. 889, § 2/HB 1035; Ga. L. 2010, p. 813, § 2/HB 1393; Ga. L. 2012, p. 1348, § 1/HB 743.)

The 2010 amendment, effective June 3, 2010, substituted “July 1, 2010 through June 30, 2012” for “July 1, 2008 through June 30, 2010” near the beginning of subparagraphs (b)(10)(A) and (b)(10)(B).

The 2012 amendment, effective July 1, 2012, substituted “July 1 2012, through June 30, 2015” for “July 1, 2010, through June 30, 2012” in subparagraphs (b)(10)(A) and (b)(10)(B).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-9-10. Refunds of motor fuel taxes, in general; application for refund permit; contents; refunds to persons using gasoline for agricultural purposes; amount; retailers; separate claims; amount; interest.

(a)(1) Retail dealers and persons using gasoline for agricultural purposes are entitled to a refund of motor fuel taxes as provided by this Code section. The right to receive any refund shall not be assignable and any assignment shall be void and of no effect. No payment shall be made by the commissioner to any person other than the original person entitled to the refund. To enable the commissioner to make the refunds as authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall remit to the commissioner from funds appropriated by law an amount equivalent to the refunds. Before the Governor issues a warrant for the funds, he shall require the commissioner to certify the name of each applicant and the amount to which each applicant is entitled.

(2) In order for any person to be eligible for the refund provided by this Code section, the person must obtain a refund permit issued by the commissioner. The permit application shall state the information required by the commissioner to establish the right of the person to obtain a refund. In order to receive the refund, the applicant shall file with the commissioner a claim as prescribed by the commissioner and shall attach invoices to show proof of purchase, payment of tax, and total accountability of the motor fuel handled, consumed, or sold. Invoices submitted for proof of purchase shall contain no alterations or corrections of the name or dates originally shown on the invoice. No invoice that bears a date falling within a period of time covered by

a previously paid refund claim shall be accepted to support the refund claim.

(3) Businesses engaged in the sale and field application of fertilizers, crop protection chemicals, and poultry litter which operate vehicles licensed for agricultural field use as defined in paragraph (.1) of Code Section 48-9-2 are entitled to a refund of motor fuel taxes paid on purchases of diesel fuel. The commissioner shall prescribe a simplified method of filing the proper records of taxable diesel fuel purchases used exclusively for agricultural field use vehicles which shall serve as the basis for the refund. The refund shall be computed by multiplying the total annual volume of taxable diesel fuel purchases used exclusively for agricultural field use vehicles, times the combined total of the current state motor fuel tax and the second motor fuel tax, with the resulting product further multiplied by a factor of .90. The commissioner shall adopt such additional rules and regulations as may be necessary to provide for the proper administration of this paragraph.

(b)(1) Every person who purchases gasoline in quantities of 25 gallons or more, when the gasoline is used in operating farm tractors and other equipment used for the production of agricultural crops on land owned or leased by such person, shall be entitled to a refund of all of the taxes imposed on gasoline by paragraph (1) of subsection (a) of Code Section 48-9-3 except 1¢ per gallon, subject to the rules and regulations adopted by the commissioner. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the gasoline on which the refund is claimed.

(2) Every person who purchases fuel oils, except those dyed fuel oils as defined in Code Section 48-9-2, in quantities of 25 gallons or more, when the fuel oils are used in operating equipment used for nonhighway purposes, shall be entitled to a refund of all of the taxes imposed on fuel oils by paragraph (1) of subsection (a) of Code Section 48-9-3 except that no interest shall be paid. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the fuel oils on which the refund is claimed.

(c) Every person who purchases motor fuel in bulk quantities and sells the motor fuel at retail shall be entitled to a refund of 2 percent of the first 5 1/2¢ per gallon of the motor fuel taxes as compensation to cover losses for evaporation, shrinkage, and spillage. A licensed distributor of a type of motor fuel is not entitled to this refund on fuel for which the distributor holds a license. All applications for refunds must be filed with the commissioner within six months from the date of purchase of the motor fuel on which the refund is claimed. Separate claims shall be made to reflect the operations of each retail location at which motor fuel is sold at retail if more than one retail location is operated by the applicant.

(d) Refunds claimed and paid pursuant to this Code section shall not bear interest. (Code 1933, § 92-1411, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5018, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5010, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 34; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 799, § 4; Ga. L. 1992, p. 2095, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1998, p. 1580, § 2; Ga. L. 2004, p. 425, § 5; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” in the fourth sentence of paragraph (a)(1).

48-9-14. Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-9-16. Penalties and interest; untimely return; failure to pay; false or fraudulent returns; failure to file returns; dyed fuel oil violations.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

ARTICLE 2

ROAD TAX ON MOTOR CARRIERS

48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.

(a) Any motor carrier which accrues credits in excess of 2,000 gallons in any quarter under Code Section 48-9-35 shall be entitled to a refund of the credits subject to the conditions set forth in this Code section.

(b) All applications for refunds must be filed with the commissioner within 180 days from the end of any quarter in which credits are accumulated. Applications shall be in the form prescribed by the commissioner, shall be sworn to, and shall be supported by evidence satisfactory to the commissioner.

(c) Any motor carrier entitled to a refund may give a bond in an amount of not less than \$1,000.00 payable to the state and conditioned

that the motor carrier will pay all road taxes due and to become due under this article. As long as the bond remains in force, the commissioner may issue refunds to the motor carrier in the amounts appearing to be due on applications without first auditing the records of the motor carrier. The bond shall be in the form and with such surety as required by the commissioner.

(d) The commissioner shall not issue refunds in excess of the amount of the bond or bonds except after audit of the applicant’s records. Except as otherwise provided by the commissioner, sufficient records must be produced in this state for audit.

(e) To enable the commissioner to make the refunds authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall remit to the commissioner, from funds appropriated by law for that purpose, an amount equivalent to the refunds. Before the Governor issues a warrant for this purpose, he shall require that the commissioner certify the name of each applicant and the amount to which he is entitled. The refunds provided by this Code section shall be nonassignable.

(f) Refunds claimed and paid pursuant to this Code section shall bear no interest. (Ga. L. 1968, p. 360, § 5; Ga. L. 1971, p. 684, § 1; Code 1933, § 91A-5105, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 104; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” near the beginning of the first sentence of subsection (e).

CHAPTER 11

TAXES ON TOBACCO PRODUCTS

Sec.		Sec.	
48-11-1.	(For effective date, see note.) Definitions.		Licensing of persons engaged in tobacco business; initial and annual fees; suspension and revocation; registration and inspection of vending machines; bond by distributor; jurisdiction; licensing of promotional activities.
48-11-2.	(For effective date, see note.) Excise tax; rate on tobacco products; retail selling price before addition of tax; exemptions; collection and payment on first transaction; dealers or distributors; tax separately identified; collection.	48-11-9.	Seizure as contraband of unstamped tobacco products; exceptions; sale at public auc-
48-11-4.	(For effective date, see note.)		

Sec.		Sec.	
	tion; procedure; disposition of proceeds; hearing; bond; contraband vending machines.		commissioner; initiation of hearings by commissioner; production of evidence; appeals; bond; grounds for not sustaining commissioner's action; costs.
48-11-10.	(For effective date, see note.) Monthly reports of licensed distributors; contents; authority to require reports from common carriers, warehousemen, and others; penalty for failure to file timely report.	48-11-22.	(For effective date, see note.) Transportation of unstamped tobacco products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.
48-11-11.	(For effective date, see note.) Records of distributors and dealers; stock of tobacco products; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.	48-11-23.	(For effective date, see note.) Transporting tobacco products in violation of Code Section 48-11-22; penalty.
48-11-13.	(For effective date, see note.) Tax on persons having tobacco products on which tax under Code Section 48-11-2 not paid; rate; exemptions.	48-11-24.	(For effective date, see note.) Penalties for possession of unstamped tobacco products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.
48-11-15.	Procedure for refund of taxes, cost price of affixed stamps, and tax on tobacco products unfit for sale, use, or consumption and destroyed or exported.	48-11-26.	(For effective date, see note.) Failure to file report or filing false report required by chapter; penalty.
48-11-16.	Purchase of tax stamps on account by licensed distributors; permit; time of payment; bond; cancellation of permit without notice for failure or refusal to comply with Code section; annual payment of any liability outstanding.	48-11-28.	(For effective date, see note.) Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.
48-11-18.	(For effective date, see note.) Procedure for hearing by persons aggrieved by action of	48-11-29.	(Repealed effective January 1, 2013) Swearing and testifying falsely with respect to matters governed by chapter; penalty.

48-11-1. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) "Cigar" means any roll for smoking made wholly or in part of tobacco when the cover of the roll is also tobacco. Such term shall include a little cigar.

(2) "Cigar dealer" means any person located within the borders of this state who sells or distributes cigars to a consumer in this state.

(3) "Cigar distributor" means any person, whether located within or outside the borders of this state, other than a cigar dealer, who

sells or distributes cigars within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigar dealers; and

(B) Is engaged in the business of:

(i) Importing cigars into this state or purchasing cigars from other cigar manufacturers or cigar distributors; and

(ii) Selling the cigars to cigar dealers in this state for resale but is not in the business of selling the cigars directly to the ultimate consumer of the cigars.

(4) "Cigar importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigar for sale or distribution.

(5) "Cigar manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigar.

(6) "Cigarette" means any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(7) "Cigarette dealer" means any person located within the borders of this state who sells or distributes cigarettes to a consumer in this state.

(8) "Cigarette distributor" means any person, whether located within or outside the borders of this state, other than a cigarette dealer, who sells or distributes cigarettes within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigarette dealers; and

(B) Is engaged in the business of:

(i) Importing cigarettes into this state or purchasing cigarettes from other cigarette manufacturers or cigarette distributors; and

(ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

Such term shall not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells or distributes cigarettes in this state only to cigarette distributors who hold valid and current licenses under Code Section 48-11-4 or to an export warehouse

proprietor or another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

(9) "Cigarette importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(10) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(11) "Counterfeit cigarette" means cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than the trademark owner of a cigarette brand or the owner's designated agent.

(12) "Dealer" means any person who is a cigar dealer, a cigarette dealer, or a loose or smokeless tobacco dealer.

(13) "Distributor" means any person who is a cigar distributor, a cigarette distributor, or a loose or smokeless tobacco distributor.

(14) "First transaction" means the first sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless tobacco within this state.

(15) "Little cigar" means any cigar weighing not more than three pounds per thousand.

(16) "Loose or smokeless tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but does not include cigarettes or cigars or tobacco purchased for the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

(17) "Loose or smokeless tobacco dealer" means any person located within the borders of this state who sells or distributes loose or smokeless tobacco to a consumer in this state.

(18) "Loose or smokeless tobacco distributor" means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on loose or smokeless tobacco dealers; and

(B) Is engaged in the business of:

(i) Importing loose or smokeless tobacco into this state or purchasing loose or smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or smokeless tobacco distributors; and

(ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in this state for resale but is not in the business of selling the loose or smokeless tobacco directly to the ultimate consumer of the loose or smokeless tobacco.

(19) “Loose or smokeless tobacco importer” means any person who imports into or who brokers within the United States, either directly or indirectly, finished loose or smokeless tobacco for sale or distribution.

(20) “Loose or smokeless tobacco manufacturer” means any person who manufactures, fabricates, assembles, processes, or labels finished loose or smokeless tobacco.

(21) “Related machinery” means any item, device, conveyance, or vessel of any kind or character used in manufacturing, packaging, labeling, stamping, transporting, distributing, selling, or possessing counterfeit cigarettes.

(22) “Sale” means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(23) “Stamp” means any impression, device, stamp, label, or print manufactured, printed, made, or affixed as prescribed by the commissioner.

(24) “Vending machine” means any coin-in-the-slot device used for the automatic merchandising of cigars, cigarettes, or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 2; Ga. L. 1960, p. 125, § 1; Ga. L. 1967, p. 563, § 1; Code 1933, § 91A-5501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 18; Ga. L. 2004, p. 384, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 1/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, added the second sentence in

paragraph (1); deleted “taxable” preceding “transaction” in paragraph (14); added paragraph (15); and redesignated former paragraphs (15) through (23) as present paragraphs (16) through (24), respectively.

48-11-2. (For effective date, see note.) Excise tax; rate on tobacco products; retail selling price before addition of tax; exemptions; collection and payment on first transaction; dealers or distributors; tax separately identified; collection.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, and loose or smokeless tobacco in this state at the following rates:

(1) Little cigars: two and one-half mills each;

(2) All cigars other than little cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size packages; and

(4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances.

(b) When the retail selling price is referred to in this chapter as the basis for computing the tax, it is intended to mean the ordinary retail selling price of the article to the consumer before adding the amount of the tax.

(c) The taxes imposed by this chapter are levied on the purchase or use of cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution, or agency of the state and by the political subdivisions of the state and their departments, institutions, and agencies. The taxes imposed by this chapter are not imposed on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

(d) The taxes imposed by this chapter are not levied on cigars, cigarettes, or loose or smokeless tobacco the purchase or use of which this state is prohibited from taxing under the Constitution or statutes of the United States.

(e) The taxes imposed by this chapter shall be advanced and paid by the dealer or distributor licensed pursuant to this chapter to the commissioner for deposit and distribution as provided in this chapter upon the first transaction within this state, whether or not the transaction involves the ultimate purchaser or consumer. The licensed dealer or distributor shall collect the tax on the first transaction within this state from the purchaser or consumer, and the purchaser or

consumer shall pay the tax to the dealer or distributor. The dealer or distributor shall be responsible for the collection of the tax and the payment of the tax to the commissioner. Whenever cigars, cigarettes, or loose or smokeless tobacco is shipped from outside this state to anyone other than a distributor, the person receiving the cigars, cigarettes, or loose or smokeless tobacco shall be deemed to be a distributor and shall be responsible for the tax on the cigars, cigarettes, or loose or smokeless tobacco and the payment of the tax to the commissioner. No tobacco products shall be received in, sold in, or shipped into this state unless lawfully obtained from a person licensed pursuant to this chapter or from an importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.

(f) The amount of taxes advanced and paid to the state as provided in this Code section shall be added to and collected as a part of the sales price of the cigars, cigarettes, or loose or smokeless tobacco sold or distributed. The amount of the tax shall be stated separately from the price of the cigars, cigarettes, or loose or smokeless tobacco.

(g) The cigars, cigarettes, and loose or smokeless tobacco tax imposed shall be collected only once upon the same cigars, cigarettes, or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 3; Ga. L. 1955, Ex. Sess., p. 48, § 1; Ga. L. 1964, p. 50, § 1; Ga. L. 1967, p. 563, §§ 2-4; Ga. L. 1971, p. 36, §§ 1, 2; Ga. L. 1971, p. 346, § 1; Code 1933, § 91A-5502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 13; Ga. L. 1986, p. 468, § 1; Ga. L. 2003, p. 665, § 19; Ga. L. 2012, p. 831, § 2/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, deleted “weighing not more than three pounds per thousand” following “Little cigars” in paragraph (a)(1); substituted “cigars other than little cigars” for “other cigars” in paragraph (a)(2); substituted “on” for “with respect to” in the first and second sentences of subsection (c) and in subsection (d); in subsection (e), in the first sentence, substituted “dealer or distributor licensed pursuant to this chapter” for “distributor”, deleted “taxable” preceding “transaction”, and substituted “this state” for “the state”, in the second and third sentences, substi-

tuted “dealer” for “seller”, in the second sentence, substituted “licensed dealer” for “seller”, inserted “on the first transaction within this state”, and inserted a comma following “consumer” near the middle; substituted “outside this state” for “outside the state” in the fourth sentence and added the last sentence; and substituted “same cigars, cigarettes,” for “same cigarettes, cigars, little cigars,” in subsection (g).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

48-11-4. (For effective date, see note.) Licensing of persons engaged in tobacco business; initial and annual fees; suspension and revocation; registration and inspection of vending machines; bond by distributor; jurisdiction; licensing of promotional activities.

(a) (For effective date, see note.) No person shall engage in or conduct the business of manufacturing, importing, brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or distributing cigars, cigarettes, or loose or smokeless tobacco in this state without first obtaining a license from the commissioner.

(b) All licenses shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of the licenses and for other purposes of enforcing this chapter. The commissioner may refuse to issue any license under this chapter when the commissioner has reasonable cause to believe that the applicant has willfully withheld information requested of the applicant or required by the regulations to be provided or reported or when the commissioner has reasonable cause to believe that the information submitted in any application or report is false or misleading and is not given in good faith.

(c) (For effective date, see note.) The annual renewal fee for a manufacturer's, importer's, or distributor's or dealer's license shall be \$10.00. There shall also be a first year registration fee of \$250.00 for a person commencing business as a manufacturer, importer, or distributor. All renewal applications shall be filed at least 30 days in advance of the expiration date shown on the license.

(1) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period.

(2) Each dealer's license shall be valid for 12 months beginning on the date of issue for the initial license, and the first day of the month of issue for subsequent licenses, and shall expire on the last day of the month preceding the month in which the initial license was issued. Any dealer licensed under the provisions of this Code section who is also licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request to the commissioner, arrange to have both licenses renewed on the same date each year. Any dealer that follows the proper procedure for a renewal of his or her license, including filing the application for renewal at least 30 days in advance of the expiration date of his or her existing license, shall be allowed to continue operating as a dealer under the existing license until the commissioner has issued the new license or denied the application for renewal.

(3) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time.

(d) (For effective date, see note.) The commissioner may make rules and regulations governing the sale of cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines. The commissioner shall require annually a special registration of each vending machine for any operation in this state and charge a license fee for the registration in the amount of \$10.00 for each machine. The annual registration shall indicate the location of the vending machine. No vending machine shall be purchased or transported into this state for use in this state when the vending machine is not so designed as to permit inspection without opening the machine for the purpose of determining that all cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp required under this chapter.

(e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the place of business for which it is issued in the manner prescribed by the commissioner. The commissioner shall require each licensed manufacturer, importer, or distributor to file with the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper performance of the manufacturer's, importer's, or distributor's duties and the discharge of the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall run concurrently with the manufacturer's, importer's, or distributor's license but shall remain in full force and effect for a period of one year after the expiration or revocation of the manufacturer's, importer's, or distributor's license unless the commissioner certifies that all obligations due the state arising under this chapter have been paid.

(f) (For effective date, see note.) The jurisdiction of the commissioner in the administration of this chapter shall extend to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any way for business purposes and maintaining a place of business in this state. For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or regular sales or promotional activity, whether carried on automatically or by salespersons or other representatives, shall constitute, among other activities, the maintaining of a place of business. For the purpose of enforcement of this chapter and the rules and regulations promulgated under this chapter, notwithstanding any other provision of law,

the commissioner or his or her duly appointed hearing officer is granted authority to conduct hearings which shall at all times be exercised in conformity with rules and regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) The commissioner may provide for the licensing of promotional activities, not including the sale of cigars, cigarettes, or loose or smokeless tobacco, carried on by the manufacturer. The fee for any such license shall be \$10.00 annually. (Ga. L. 1955, p. 268, § 5; Ga. L. 1960, p. 125, § 3; Code 1933, § 91A-5504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 37; Ga. L. 1993, p. 343, § 6; Ga. L. 2003, p. 665, § 21; Ga. L. 2004, p. 384, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 3/HB 1071.)

Delayed effective date. — Subsections (a), (c), (d), and (f), as set out above, become effective January 1, 2013. For version of subsections (a), (c), (d), and (f) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, inserted "shipping, receiving," near the middle of subsection (a); substituted the present provisions of subsection (c) for the former provisions, which read: "The fee for a manufacturer's, importer's, or distributor's license shall be \$50.00 annually, except that for a person commencing business as a manufacturer, importer, or distributor for the first time the first year's fee shall be \$250.00. Each dealer shall have a permanent license issued by the commissioner free of charge. Each license, except a dealer's license, shall begin on July 1 and end on June 30

of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period. Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time."; in subsection (d), substituted "\$10.00" for "\$1.00" in the second sentence, and inserted "all" in the last sentence; in the last sentence of subsection (f), substituted "under this chapter" for "hereunder", and inserted "with rules and regulations promulgated by the commissioner and consistent" near the end.

48-11-9. Seizure as contraband of unstamped tobacco products; exceptions; sale at public auction; procedure; disposition of proceeds; hearing; bond; contraband vending machines.

(a)(1) Any cigars, cigarettes, or loose or smokeless tobacco found at any place in this state without stamps affixed to them as required by this chapter and any cigarettes seized pursuant to subsection (b) of Code Section 10-13A-8 are declared to be contraband articles and may be seized by the commissioner, the commissioner's agents or employees, or any peace officer of this state when directed by the commissioner to do so.

(2) Paragraph (1) of this subsection shall not apply when:

(A) The tax has been paid on the unstamped cigars and little cigars or loose or smokeless tobacco in accordance with the commissioner's regulations promulgated pursuant to Code Section 48-11-3;

(B) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a licensed distributor;

(C) The cigars, cigarettes, or loose or smokeless tobacco is in course of transit from outside the state and is consigned to a licensed distributor;

(D) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a transporter who is in compliance with Code Section 48-11-22; or

(E) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a registered taxpayer as defined in Code Section 48-11-14 and the time for making the report required by Code Section 48-11-14 has not expired.

(3) This subsection shall not be construed to require the commissioner to confiscate unstamped or nontax-paid cigars, cigarettes, and loose or smokeless tobacco or other property when the commissioner has reason to believe that the owner of the cigars, cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally evading the tax imposed by this chapter.

(b) Any cigars, cigarettes, loose or smokeless tobacco, or other property seized pursuant to this chapter may be offered for sale by the commissioner, at the commissioner's discretion, at public auction to the highest bidder after advertisement as provided in this Code section. The commissioner shall deliver to the Office of the State Treasurer the proceeds of any sale made under this Code section. Before delivering any cigars, cigarettes, or loose or smokeless tobacco sold to a purchaser at the sale, the commissioner shall require the purchaser to affix to the packages the amount of stamps required by this chapter or to comply with the commissioner's alternate method. The seizure and sale of any cigars, cigarettes, loose or smokeless tobacco, or property pursuant to this chapter shall not relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

(c) When any cigars, cigarettes, loose or smokeless tobacco, or other property has been seized pursuant to this chapter, the commissioner, at the commissioner's discretion, may advertise it for sale in a newspaper published or having a circulation in the place in which the seizure occurred, at least five days before the sale. Any person claiming an interest in the cigars, cigarettes, loose or smokeless tobacco, or other property may make written application to the commissioner for a

hearing. The application shall state the person's interest in the cigars, cigarettes, loose or smokeless tobacco, or other property and such person's reasons why the cigars, cigarettes, loose or smokeless tobacco, or other property should not be forfeited. Further proceedings on the application for hearing shall be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars, cigarettes, loose or smokeless tobacco, or property seized pursuant to this chapter shall be made while an application for a hearing is pending before the commissioner. The pendency of an appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale unless the appellant posts a satisfactory bond with surety in an amount double the estimated value of the cigars, cigarettes, loose or smokeless tobacco, or other property and conditioned upon the successful termination of the appeal.

(d) Any vending machine containing or dispensing any cigarettes or loose or smokeless tobacco which does not bear the tax stamps required under this chapter or containing or dispensing any cigars or loose or smokeless tobacco upon which the tax has not been paid either through the purchase of stamps or the alternate procedure provided by the commissioner as required under this chapter shall be a contraband article. The commissioner may seize any such machine and deal with it in the same manner as provided by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 10; Ga. L. 1960, p. 125, § 7; Ga. L. 1967, p. 563, §§ 7, 8; Ga. L. 1969, p. 710, § 2; Code 1933, § 91A-5509, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 665, § 24; Ga. L. 2003, p. 829, § 3; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fis-

cal Services" in the middle of the second sentence of subsection (b).

48-11-10. (For effective date, see note.) Monthly reports of licensed distributors; contents; authority to require reports from common carriers, warehousemen, and others; penalty for failure to file timely report.

(a) (For effective date, see note.) Every licensed distributor shall file with the commissioner, on or before the tenth day of each month, a report in the form prescribed by the commissioner disclosing:

(1) The quantity of cigars, cigarettes, or loose or smokeless tobacco on hand on the first and last days of the calendar month immediately preceding the month in which the report is filed;

(2) Information required by the commissioner concerning the amount of stamps purchased, used, and on hand during the report period; and

(3) Information otherwise required by the commissioner for the report period.

(b) The commissioner may require other reports as the commissioner deems necessary for the proper administration of this chapter, including, but not limited to, reports from common carriers and warehousemen with respect to cigars, cigarettes, and loose or smokeless tobacco delivered to or stored at any point in this state.

(c) (For effective date, see note.) Any person who fails to file any report when due shall forfeit as a penalty for each day after the due date until the report is filed the sum of \$25.00, to be collected in the manner provided in subsection (c) of Code Section 48-11-24 for the collection of penalties. (Ga. L. 1955, p. 268, § 11; Ga. L. 1967, p. 563, § 9; Ga. L. 1969, p. 710, § 3; Code 1933, § 91A-5510, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 25; Ga. L. 2012, p. 831, § 4/HB 1071.)

Delayed effective date. — Subsections (a) and (c), as set out above, become effective January 1, 2013. For version of subsections (a) and (c) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, deleted “and” following “commissioner” in the introductory paragraph of subsection (a); and substituted “\$25.00” for “\$1.00” in subsection (c).

48-11-11. (For effective date, see note.) Records of distributors and dealers; stock of tobacco products; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.

(a) Each distributor and each dealer shall keep complete and accurate records of all cigars, cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and sold. The original records or a complete and legible photocopy or electronic image shall be safely preserved for three years in an appropriate manner to ensure permanency and accessibility for inspection by the commissioner and the commissioner’s authorized agents. The commissioner and the commissioner’s authorized agents may examine the books, papers, and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by this chapter has been fully paid and, for the purpose of determining whether the provisions of this chapter are properly observed, may investigate and examine the stock of cigars, cigarettes, or loose or smokeless tobacco in or upon any premises, including, but not limited to, public and private warehouses where the cigars, cigarettes, or loose or smokeless tobacco is possessed, stored, or sold. Invoices sufficient to cover current inventory at a licensed location

shall be maintained at that licensed location and made available for immediate inspection. All other records may be kept at a locality other than the licensed location and shall be provided for inspection within two business days after receipt of notification from the commissioner or an authorized agent of the commissioner to make such records available.

(b) The commissioner and his or her authorized agents may examine the books, papers, and records of any transportation company, any common, contract, or private carrier, and any public or private warehouse for the purpose of determining whether the provisions of this chapter are properly observed. (Ga. L. 1955, p. 268, § 12; Code 1933, § 91A-5511, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 26; Ga. L. 2012, p. 831, § 5/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, in subsection (a), substituted “The original records or a complete and

legible photocopy or electronic image” for “The records shall be of the kind and in the form prescribed by the commissioner and” in the second sentence, added a comma following “premises” in the third sentence, and added the fourth and fifth sentences; and inserted “or her” in subsection (b).

48-11-13. (For effective date, see note.) Tax on persons having tobacco products on which tax under Code Section 48-11-2 not paid; rate; exemptions.

(a) There is imposed a tax on every person for the privilege of using, consuming, or storing cigars, cigarettes, and loose or smokeless tobacco in this state on which the tax imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and graduated in accordance with the volume of cigars, cigarettes, and loose or smokeless tobacco used, consumed, or stored as set forth in Code Section 48-11-2.

(b) This Code section shall not apply to:

(1) Cigars, cigarettes, or loose or smokeless tobacco in the hands of a licensed distributor or dealer;

(2) Cigars, cigarettes, or loose or smokeless tobacco in the possession of a carrier complying with Code Section 48-11-22;

(3) Cigars, cigarettes, or loose or smokeless tobacco stored in a public warehouse;

(4) (For effective date, see note.) Cigarettes or little cigars in an amount not exceeding 200 cigarettes or little cigars which have been brought into the state on the person;

(5) Cigars in an amount not exceeding 20 cigars which have been brought into the state on the person; or

(6) Loose or smokeless tobacco in an amount not exceeding six containers which has been brought into the state on the person. (Ga. L. 1955, p. 268, § 14; Code 1933, § 91A-5513, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 28; Ga. L. 2012, p. 831, § 6/HB 1071.)

Delayed effective date. — Paragraph (b)(4), as set out above, becomes effective January 1, 2013. For version of paragraph (b)(4) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, twice inserted “or little cigars” in paragraph (b)(4).

48-11-15. Procedure for refund of taxes, cost price of affixed stamps, and tax on tobacco products unfit for sale, use, or consumption and destroyed or exported.

The Office of the State Treasurer is authorized to pay, on the order of the commissioner, claims for refunds of cigar, cigarette, or loose or smokeless tobacco taxes found by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The commissioner, upon proof satisfactory to the commissioner and in accordance with regulations promulgated by the commissioner, shall refund the cost price of stamps affixed to any package of cigars, cigarettes, or loose or smokeless tobacco or shall refund the tax paid on cigars or loose or smokeless tobacco under the alternate method when the cigars, cigarettes, or loose or smokeless tobacco has become unfit for use, consumption, or sale and has been destroyed or shipped out of the state. (Ga. L. 1955, p. 268, § 21; Ga. L. 1964, p. 50, § 3; Ga. L. 1967, p. 563, § 11; Code 1933, § 91A-5518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2003, p. 665, § 30; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” near the beginning of the first sentence of this Code section.

48-11-16. Purchase of tax stamps on account by licensed distributors; permit; time of payment; bond; cancellation of permit without notice for failure or refusal to comply with Code section; annual payment of any liability outstanding.

(a) The commissioner may permit licensed distributors to purchase tax stamps from the department on account. Permits may be granted only to licensed distributors who post bonds with the commissioner in amounts sufficient in the opinion of the commissioner to secure payment for stamps delivered on account. Tax stamps purchased by licensed distributors shall be paid for in full on or before the twentieth

day of the month next succeeding the purchase. The bond provided in this Code section shall be secured by cash which shall bear no interest, by negotiable securities approved by the Office of the State Treasurer, or by a surety bond executed by a surety company licensed to do business in this state and approved by the commissioner.

(b) The commissioner may cancel without notice any permit issued under this Code section if the licensed distributor fails or refuses to comply with the requirements of this Code section or with the rules and regulations adopted under authority of this Code section.

(c) On or before June 30 of each fiscal year, the licensed distributor shall pay in its entirety any liability for the purchase of tax stamps due at that time. (Ga. L. 1970, p. 146, § 1; Code 1933, § 91A-5525, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the middle of the last sentence of subsection (a).

48-11-18. (For effective date, see note.) Procedure for hearing by persons aggrieved by action of commissioner; initiation of hearings by commissioner; production of evidence; appeals; bond; grounds for not sustaining commissioner’s action; costs.

(a) Any person aggrieved by any action of the commissioner or the commissioner’s authorized agent may apply to the commissioner, in writing within ten days after the notice of the action is delivered or mailed to the commissioner, for a hearing. The application shall set forth the reasons why the hearing should be granted and the manner of relief sought. The commissioner shall notify the applicant of the time and place fixed for the hearing. After the hearing, the commissioner may make an order as may appear to the commissioner to be just and lawful and shall furnish a copy of the order to the applicant. The commissioner at any time by notice in writing may order a hearing on the commissioner’s own initiative and require the taxpayer or any other person whom the commissioner believes to be in possession of information concerning any manufacture, importation, use, consumption, storage, or sale of cigars, cigarettes, or loose or smokeless tobacco which has escaped taxation to appear before the commissioner or the commissioner’s duly authorized agent with any specific books of account, papers, or other documents for examination under oath relative to the information.

(b) (For effective date, see note.) Any person aggrieved because of any final action or decision of the commissioner, after hearing, may appeal

from the decision to the superior court of the county in which the appellant resides. The appeal shall be returnable at the same time and shall be served and returned in the same manner as required in the case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond of recognizance to the state, with surety, conditioned to prosecute the appeal and to effect and comply with the orders and decrees of the court. The action of the commissioner shall be sustained unless the court finds that the commissioner misinterpreted this chapter or that there is no evidence to support the commissioner's action. If the commissioner's action is not sustained, the court may grant equitable relief to the appellant. Upon all appeals which are denied, costs may be taxed against the appellant at the discretion of the court. No costs of any appeal shall be taxed against the state. (Ga. L. 1955, p. 268, §§ 19, 20; Code 1933, § 91A-5517, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 32; Ga. L. 2012, p. 831, § 7/HB 1071.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2013. For version of subsection (b) in effect until January 1, 2013, see the 2012 amendment note.

ary 1, 2013, in subsection (b), inserted “final” in the first sentence, and in the fourth sentence, substituted “the commissioner” for “he” and substituted “the commissioner’s” for “his”.

The 2012 amendment, effective Janu-

48-11-22. (For effective date, see note.) Transportation of unstamped tobacco products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.

(a) Every person who transports upon the public highways, roads, and streets of this state cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been paid in accordance with the alternate regulations provided by the commissioner under Code Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets for the cigars, cigarettes, and loose or smokeless tobacco which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, the quantity and brands of the cigars, cigarettes, or loose or smokeless tobacco transported, and the name and address of the person who has assumed or shall assume the payment of the tax at the point of ultimate destination. In the absence of the invoices or delivery tickets, the cigars, cigarettes, or loose or smokeless tobacco being transported and the vehicles in which the cigars, cigarettes, or loose or smokeless tobacco is being transported shall be confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may be liable for a penalty of not more than \$50.00 for each individual carton of little cigars or cigarettes, \$50.00 for each individual box of cigars, and \$50.00 for each individual container of loose or smokeless tobacco being transported by such person. The

penalty shall be recovered as provided in subsection (c) of Code Section 48-11-24.

(b) This Code section shall apply only to the transportation of more than 200 cigarettes, more than 200 little cigars, more than 20 cigars, or more than six containers of loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 22; Ga. L. 1967, p. 563, § 12; Code 1933, § 91A-5519, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 34; Ga. L. 2012, p. 831, § 8/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective Janu-

ary 1, 2013, in subsection (a), in the next-to-last sentence, twice substituted “\$50.00” for “\$25.00” and inserted “little cigars or”; and, in subsection (b), deleted “with respect” following “apply only” and inserted “more than 200 little cigars,”.

48-11-23. (For effective date, see note.) Transporting tobacco products in violation of Code Section 48-11-22; penalty.

(a) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to transport cigars, cigarettes, or loose or smokeless tobacco in violation of Code Section 48-11-22.

(b) Any person who violates Code Section 48-11-22, with the intent to evade the tax imposed by this chapter, shall, upon conviction, be subject to the following punishments:

(1) If such person is transporting more than 20 but fewer than 60 cigars, more than 200 but fewer than 600 cigarettes or little cigars, or more than six but fewer than 18 containers of loose or smokeless tobacco, such person shall be guilty of a misdemeanor;

(2) If such person is transporting 60 or more but fewer than 200 cigars, 600 or more but fewer than 2,000 cigarettes or little cigars, or 18 or more but fewer than 60 containers of loose or smokeless tobacco, such person shall be guilty of a misdemeanor of a high and aggravated nature; or

(3) If such person is transporting 200 or more cigars, 2,000 or more cigarettes or little cigars, or 60 or more containers of loose or smokeless tobacco, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years. (Ga. L. 1969, p. 710, § 5; Code 1933, § 91A-9926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 35; Ga. L. 2012, p. 831, § 9/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code

section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective Janu-

ary 1, 2013, inserted the first occurrence of “the” in subsection (a); and substituted the present provisions of subsection (b) for

the former provisions, which read: “Any person who violates Code Section 48-11-22 shall be guilty of a misdemeanor.”

48-11-24. (For effective date, see note.) Penalties for possession of unstamped tobacco products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.

(a) Any person who possesses unstamped cigarettes or nontax-paid cigars, or little cigars, or loose or smokeless tobacco in violation of this chapter shall be liable for a penalty of not more than \$50.00 for each individual carton of unstamped cigarettes and \$50.00 for each individual nontax-paid carton of little cigars, box of cigars or container of loose or smokeless tobacco in his or her possession.

(b) Any person who engages in any business or activity for which a license is required by this chapter without first having obtained a license to do so or any person who continues to engage in or conduct the business after the person’s license has been revoked or during a suspension of the license shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months, a fine of not more than \$5,000.00, or both. Each day that the business is engaged in or conducted shall be deemed a separate offense.

(c) Proceedings to enforce and collect the penalties provided by this chapter shall be brought by and in the name of the commissioner. With respect to offenses committed within the territorial jurisdiction of the court, each superior court shall have jurisdiction to enforce and collect the penalty. The costs recoverable in any such proceeding shall be recovered by the commissioner in the event of judgment in the commissioner’s favor. If the judgment is for the defendant, it shall be without costs against the commissioner. All expenses incident to the recovery of any penalty pursuant to this Code section shall be paid in the same manner as any other expense incident to the administration of this chapter. (Ga. L. 1955, p. 268, § 23; Ga. L. 1967, p. 563, § 13; Code 1933, § 91A-5520, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 37; Ga. L. 2012, p. 831, § 10/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, in subsection (a), substituted “cigarettes or nontax-paid cigars, or little

cigars,” for “cigarettes or loose or smokeless tobacco or nontax-paid cigars”, substituted “\$50.00” for “\$25.00”, deleted “or loose or smokeless tobacco” following “unstamped cigarettes”, and substituted “individual nontax-paid carton of little cigars, box of cigars or container of” for “individual box of nontax-paid cigars or”;

in subsection (b), in the first sentence, substituted “the person’s” for “his” and substituted “guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months, a fine of

not more than \$5,000.00, or both” for “liable for a penalty of not more than \$250.00”; and substituted “the commissioner’s” for “his” in the third sentence of subsection (c).

48-11-26. (For effective date, see note.) Failure to file report or filing false report required by chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person, with the intent to defraud the state or evade the payment of any tax, penalty, or interest or any part of a payment when due, to:

(1) Willfully fail or refuse to file any report or statement required to be filed pursuant to this chapter or by the commissioner’s rules and regulations; or

(2) Aid or abet another in the filing with the commissioner of any false or fraudulent report or statement.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 for each separate offense. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 11/HB 1071.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, added “or” at the end of paragraph (a)(1); deleted former paragraph (a)(2), which read: “File or cause to

be filed with the commissioner any false or fraudulent report or statement; or”; redesignated former paragraph (a)(3) as present paragraph (a)(2); and added “of a high and aggravated nature and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 for each separate offense” at the end of subsection (b).

48-11-28. (For effective date, see note.) Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person to:

(1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the commissioner;

(2) Cause or procure a violation of paragraph (1) of this subsection to be done;

(3) Willfully utter, publish, pass, or render as true any false, altered, forged, or counterfeited stamp;

(4) Knowingly possess any false, altered, forged, or counterfeited stamp;

(5) For the purpose of evading the tax imposed, use more than once any stamp required by this chapter; or

(6) Tamper with or cause to be tampered with any metering machine authorized to be used.

(b) (For effective date, see note.) Any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9924, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 12/HB 1071.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2013. For version of subsection (b) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, substituted “three years” for “one year” in subsection (b).

48-11-29. (Repealed effective January 1, 2013) Swearing and testifying falsely with respect to matters governed by chapter; penalty.

Reserved. Repealed by Ga. L. 2012, p. 831, § 13/HB 1071, effective January 1, 2013.

Editor’s notes. — Ga. L. 2012, p. 831, § 13/HB 1071 provides for the repeal of this Code section, effective January 1,

2013. For provisions of this Code section effective until that date, see the bound volume.

CHAPTER 13

SPECIFIC, BUSINESS, AND OCCUPATION TAXES

Article 1		Sec.	
General Provisions			
Sec.			individuals and entities not subject to fees; general laws not repealed.
48-13-9.	Limitation on authority of local government to impose regulatory fee; examples of businesses or practitioners of professions or occupations which may be subject to fees;	48-13-16.	Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.
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cupation taxes on licensed businesses, trades, and professions; limitation; prohibition of municipal licensing or taxation of businesses, trades, or operations operating registered vehicles.

- 48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; applicability of section; required information; electronic submission of information to Department of Revenue; establishment of website or electronic portal; promulgation of rules and regulations.

Article 2

Nonresident Contractors

- 48-13-31. Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.

Article 3

Excise Tax on Rooms, Lodgings, and Accommodations

- 48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.
- 48-13-55. Facility operated by charita-

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ble trust or functionally related business; license fees; limitation on or applicability of tax levies.

Article 6

Excise Tax On Sale Or Use Of Energy

- 48-13-110. (Effective January 1, 2013) Definitions.
- 48-13-111. (Effective January 1, 2013) Creation of special districts.
- 48-13-112. (Effective January 1, 2013) Levy and collection of excise tax on sale or use of energy.
- 48-13-113. (Effective January 1, 2013) Notice of meeting to determine levy.
- 48-13-114. (Effective January 1, 2013) Adoption of ordinance levying excise tax within special district.
- 48-13-115. (Effective January 1, 2013) Nonparticipation of county within special district to enter into intergovernmental agreement.
- 48-13-116. (Effective January 1, 2013) Imposition of excise tax; effective date; limitations.
- 48-13-117. (Effective January 1, 2013) Procedures for manner of payment and collection.
- 48-13-118. (Effective January 1, 2013) Separate revenue schedule required.

ARTICLE 1

GENERAL PROVISIONS

48-13-6. Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations; hearing on tax increase.

JUDICIAL DECISIONS

Authority to collect occupation tax. — First city lacked authority to collect an occupation tax on professional or business activities within a second city's limits be-

cause the first city did not identify any constitutional provision or general law that authorized the first city to levy, assess, and collect an occupation tax on

businesses and practitioners that were not located in that city's limits, and to the extent an agreement between the cities purported to vest in the first city the authority to collect an occupation tax on businesses located within the second city's limits, the contract was unenforceable; a contract between municipalities, however, is not a general law. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

Authority of municipality to collect tax. — Because a second city provided by local ordinance for the levy, assessment, and collection of an occupation tax on businesses and practitioners operating within that city's limits, the second city had the general authority to collect such a tax under O.C.G.A. § 48-13-6(b), and only

the second city was authorized to levy, assess, and collect an occupation tax from businesses and practitioners at the airport that were located within the second city's limits to the extent consistent with Ga. Const. 1983, Art. IX, Sec. IV, Para. I, O.C.G.A. § 48-13-6(b), other applicable statutes, and that city's own charter, ordinances, and regulations; *Atlanta, Ga., Charter*, § 7-105(f) is ineffective to the extent it purports to divest College Park, Georgia of the authority to levy, assess, and collect an occupation tax on those businesses and practitioners operating at the airport and within the city limits of College Park. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-9. Limitation on authority of local government to impose regulatory fee; examples of businesses or practitioners of professions or occupations which may be subject to fees; individuals and entities not subject to fees; general laws not repealed.

(a) A local government is authorized to require a business or practitioner of a profession or occupation to pay a regulatory fee only if the local government customarily performs investigation or inspection of such businesses or practitioners of such profession or occupation as protection of the public health, safety, or welfare or in the course of enforcing a state or local building, health, or safety code, but no local government is authorized to use regulatory fees as a means of raising revenue for general purposes; provided that the amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government.

(b) Examples of businesses or practitioners of professions or occupations which may be subject to regulatory fees of local governments include, but are expressly not limited to, the following:

- (1) Building and construction contractors, subcontractors, and workers;
- (2) Carnivals;
- (3) Taxicab and limousine operators;
- (4) Tattoo artists;
- (5) Stables;
- (6) Shooting galleries and firearm ranges;

- (7) Scrap metal processors;
- (8) Pawnbrokers;
- (9) Food service establishments;
- (10) Dealers in precious metals;
- (11) Firearms dealers;
- (12) Peddlers;
- (13) Parking lots;
- (14) Nursing homes, assisted living communities, and personal care homes;
- (15) Newspaper vending boxes;
- (16) Modeling agencies;
- (17) Massage parlors;
- (18) Landfills;
- (19) Auto and motorcycle racing;
- (20) Boarding houses;
- (21) Businesses which provide appearance bonds;
- (22) Boxing and wrestling promoters;
- (23) Hotels and motels;
- (24) Hypnotists;
- (25) Handwriting analysts;
- (26) Health clubs, gyms, and spas;
- (27) Fortunetellers;
- (28) Garbage collectors;
- (29) Escort services;
- (30) Burglar and fire alarm installers; and
- (31) Locksmiths.

(c) Examples of businesses and practitioners of professions and occupations which local governments are not authorized to subject to regulatory fees include, but are expressly not limited to, the following:

- (1) Lawyers;
- (2) Physicians licensed under Chapter 34 of Title 43;
- (3) Osteopaths licensed under Chapter 34 of Title 43;

- (4) Chiropractors;
 - (5) Podiatrists;
 - (6) Dentists;
 - (7) Optometrists;
 - (8) Psychologists;
 - (9) Veterinarians;
 - (10) Landscape architects;
 - (11) Land surveyors;
 - (12) Practitioners of physiotherapy;
 - (13) Public accountants;
 - (14) Embalmers;
 - (15) Funeral directors;
 - (16) Civil, mechanical, hydraulic, or electrical engineers;
 - (17) Architects;
 - (18) Marriage and family therapists, social workers, and professional counselors;
 - (19) Dealers of motor vehicles, as defined in paragraph (1) of Code Section 10-1-622;
 - (20) Owners or operators of bona fide coin operated amusement machines, as defined in Code Section 48-17-1, and owners or operators of businesses where bona fide coin operated amusement machines are available for commercial use and play by the public, provided that such amusement machines have affixed current stickers showing payment of annual permit fees, in accordance with Code Section 48-17-9;
 - (21) Merchants or dealers as defined in Code Section 48-5-354 as to their deliveries to businesses and practitioners of professions and occupations in areas zoned for commercial use; and
 - (22) Any other business, profession, or occupation for which state licensure or registration is required by state law, unless the state law regulating such business, profession, or occupation specifically allows for regulation by local governments.
- (d) This Code section shall not be construed to repeal other general laws which allow or require regulation of businesses, occupations, or professions by local governments.

(e) For each business, profession, or occupation, local governments are authorized to determine the amount of a regulatory fee imposed in accordance with this article only by one of the following methods:

(1) A flat fee for each business or practitioner of a profession or occupation doing business in the jurisdiction as authorized by Code Section 48-13-8;

(2) A flat fee for each type of permit or inspection requested;

(3) An hourly rate determined by the hourly wage or salary, including employee benefits, of the person or persons assigned to investigate or inspect multiplied by the number of hours estimated for the investigation or inspection to be performed;

(4) An hourly rate as determined by paragraph (3) of this subsection with the addition of other expenses reasonably related to such regulatory activity, such as administrative and travel expenses, multiplied by the number of hours estimated for the investigation or inspection to be performed;

(5) For construction projects that are classified as new construction, the number of square feet of construction or the number of square feet of construction to be served by the system to be installed, in conjunction with and limited by the building valuation data, as established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection; or

(6) For construction projects that are classified as renovation and all other construction projects other than those classified as new construction, the cost of the project in conjunction with and limited by the building valuation data that conforms with the principles and methods established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection. (Code 1981, § 48-13-9, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 3; Ga. L. 2006, p. 544, § 2/HB 304; Ga. L. 2011, p. 227, § 28/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted “homes, assisted living communities,” in paragraph (b)(14).

48-13-13. Prohibitions on occupation tax levies by local governments.

JUDICIAL DECISIONS

Local authority explained. — In enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term “local authority” in O.C.G.A. § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality; use of the phrase “local authority” shows that the General Assembly views a local government, that is, a county or municipality, and a local authority as distinct categories, and a “local authority” means an agency created by one or more local governments to carry out certain discrete governmental functions for a local purpose. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

City was not a local authority. — Trial court erred in determining that a first city was a local authority that was statutorily exempt from liability to a second city for any occupation tax for the first city’s proprietary business operations because the first city was not a local authority within the meaning of O.C.G.A. § 48-13-13(5), such that the second city was prohibited from taxing the first city; in enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term “local authority” in § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-16. Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.

(a) The following businesses or practitioners shall be excluded from occupation tax, registration fees, or regulatory fees under the provisions of this article but shall be subject to taxation and regulation as otherwise provided by general law and municipal charters:

(1) Those businesses regulated by the Georgia Public Service Commission and the Georgia Department of Public Safety;

(2) Those electrical service businesses organized under Chapter 3 of Title 46; and

(3) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness.

(b) This article shall not be construed to repeal other provisions of general law relating to local governments’ occupation tax, registration fees, or regulatory fees for businesses or practitioners of professions or occupations. (Code 1981, § 48-13-16, enacted by Ga. L. 1993, p. 1292,

§ 7; Ga. L. 1994, p. 366, § 2; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 24/HB 865.)

The 2012 amendment, effective July 1, 2012, added “and the Georgia Department of Public Safety” at the end of paragraph (a)(1).

48-13-18. Levy by municipalities of occupation taxes on licensed businesses, trades, and professions; limitation; prohibition of municipal licensing or taxation of businesses, trades, or operations operating registered vehicles.

(a) When otherwise authorized by law to levy occupation taxes on businesses, trades, and professions, a municipality shall be permitted to levy the taxes on businesses, trades, and professions which are licensed by or registered with the state. This Code section shall not be construed to repeal any express limitations on such municipal authority contained in general law.

(b) Nothing contained in this Code section shall be construed to authorize the municipal licensing or taxation of businesses, trades, or occupations operating motor vehicles required to be registered with the Department of Public Safety of this state. (Code 1933, § 91A-6015, enacted by Ga. L. 1980, p. 1175, § 1; Code 1981, § 48-13-7; Code 1981, § 48-13-18, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 25/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Department of Public Safety” for “Public Service Commission” near the end of subsection (b).

48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; applicability of section; required information; electronic submission of information to Department of Revenue; establishment of website or electronic portal; promulgation of rules and regulations.

(a) The provisions of this Code section shall apply only in a municipality or county levying an occupation tax or regulatory fee under this article and shall apply only upon the adoption of a resolution of such governing authority consenting to the applicability of this Code section.

(b) Following the adoption of the resolution provided for in subsection (a) of this Code section, any person who performs any business, occupation, or profession and who is subject to an occupation tax or regulatory fee under this article shall be subject to the requirements of this Code section. Such person shall provide to the municipality or county levying an occupation tax or regulatory fee under this article, at

the time such occupation tax or regulatory fee is due and payable, the information required under subsection (c) of this Code section. Such municipality or county shall provide written notice to such person that such information, or the refusal to provide such information, shall be provided to the department. The failure or refusal of such person to provide such information shall not toll or extend the time of payment established for such occupation tax or regulatory fee under Code Section 48-13-20.

(c) The following information shall be requested from such person by such municipality or county:

(1) The legal name of such business and any associated trade names;

(2) The mailing address of such business and the actual physical address of each location of such business if different than the mailing address; and

(3) The sales and use tax identification number assigned to such business by the department if such business is required to have such number pursuant to Article 1 of Chapter 8 of this title.

(d) Within 30 days of the time of payment of such occupation tax or regulatory fee under Code Section 48-13-20, the municipality or county collecting the occupation tax or regulatory fee and the information authorized under subsection (c) of this Code section from such person shall submit electronically to the department the information received from such person under subsection (c) of this Code section. Such municipality or county shall also submit any applicable North American Industry Classification System Code number or numbers electronically to the department.

(e) The department shall establish and maintain an appropriate website or electronic portal for the submission by municipalities and counties of the information required by this Code section.

(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-13-20.1, enacted by Ga. L. 2010, p. 804, § 1/HB 1093.)

Effective date. — This Code section became effective June 2, 2010.

ARTICLE 2

NONRESIDENT CONTRACTORS

48-13-31. **Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.**

Each nonresident contractor desiring to engage in the business of contracting in this state shall register with the commissioner for each contract when the total contract price or compensation to be received amounts to more than \$10,000.00 and shall report to the commissioner as provided by rule with respect to the tax liability of the contractor pursuant to the business including, but not limited to, liability under Chapter 8 of Title 34. The commissioner shall charge a fee for the registration in the amount of \$10.00 for each contract. All fees received by the commissioner shall be deposited on Monday of each week with the Office of the State Treasurer. (Ga. L. 1961, p. 480, § 2; Ga. L. 1972, p. 492, § 1; Code 1933, § 91A-6102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” at the end of the last sentence of this Code section.

JUDICIAL DECISIONS

Late registration sufficient. — Subcontractor’s late registration and payment of all taxes and revenues due the state and the state’s political subdivisions constituted substantial compliance with the requirements of the Nonresident Contractors Act, O.C.G.A. § 48-13-31, thus removing the bar to the subcontractor’s maintenance of an action on the contract against the contractor. *Mayor & Aldermen of Savannah v. Batson-Cook Co.*, 310 Ga. App. 878, 714 S.E.2d 242 (2011).

ARTICLE 3

EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS

48-13-50. **Purpose.**

Law reviews. — For article, “Online Travel Companies Find Issues with Hotels Extremely Taxing: Georgia’s Hotel-Motel Occupancy Excise Tax and Expedia, Inc. v. City of Columbus, T.J. Evans,” see 61 Mercer L. Rev. 1263 (2010).

JUDICIAL DECISIONS

Collection of taxes.
In a city’s action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by

requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city's ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper;

thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Cited in *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

48-13-50.2. Definitions.

JUDICIAL DECISIONS

Cited in *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.

(a)(1)(A) The governing authority of each municipality in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. The provisions of this Code section shall control over the provisions of any local ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and in effect prior to July 1, 1998. Any such ordinance shall not be deemed repealed by this Code section but shall be administered in conformity with this Code section.

(B)(i) The excise tax shall be imposed on any person or legal entity licensed by or required to pay a business or occupation tax to the governing authority imposing the tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation. Every person

or entity subject to a tax levied as provided in this Code section shall, except as provided in this Code section, be liable for the tax at the applicable rate on the lodging charges actually collected or, if the amount of taxes collected from the hotel or motel guest is in excess of the total amount that should have been collected, the total amount actually collected must be remitted.

(ii) Any tax levied as provided in this Code section is also imposed upon every person or entity who is a hotel or motel guest and who receives a room, lodging, or accommodation that is subject to the tax levied under this Code section. Every such guest subject to the tax levied under this Code section shall pay the tax to the person or entity providing the room, lodging, or accommodation. The tax shall be a debt of the person obtaining the room, lodging, or accommodation to the person or entity providing such room, lodging, or accommodation until it is paid and shall be recoverable at law by the person or entity providing such room, lodging, or accommodation in the same manner as authorized for the recovery of other debts. The person or entity collecting the tax from the hotel or motel guest shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed by division (i) of this subparagraph on the person or entity providing the room, lodging, or accommodation.

(C) Reserved.

(D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection, no tax levied pursuant to this Code section shall be levied or collected at a rate exceeding 3 percent of the charge to the public for the furnishings.

(2) A county or municipality levying a tax as provided in paragraph (1) of this subsection shall in each fiscal year beginning on or after July 1, 1987, expend for the purpose of promoting tourism, conventions, and trade shows a percentage of the total taxes collected under this Code section which is not less than the percentage of such tax collections expended for such purposes during the immediately preceding fiscal year. In addition, if during such immediately preceding fiscal year any portion of such tax receipts was expended for such purposes through a grant to or a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, then in each fiscal year beginning on or after July 1, 1987, at least the same percentage shall be expended through a contract or contracts with one or more such entities for the purpose of promoting tourism, conventions, and trade shows. The expenditure requirements of this paragraph shall cease to apply to a

county or municipality which levies a tax at a rate in excess of 3 percent, as authorized under paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection; and in such case the expenditure requirements of such paragraph of this subsection pursuant to which such tax is levied shall apply instead.

(2.1)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which county or municipality community auditorium or theater facilities owned and operated by a municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 5 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of general recreation. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(2.2)(A) Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term:

(i) "Charitable trust" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(ii) "Development authority" shall mean a development authority created pursuant to Chapter 62 of Title 36, the "Development Authorities Law."

(iii) "Facility" or "facilities" shall mean any of the buildings, structures, and facilities described in division (ii) of subparagraph (D) of this paragraph.

(iv) "Functionally related business" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(v) "Fund" or "funding" shall include the cost and expense of all things necessary for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing (including the payment of principal of and interest on any obligation of a development authority to finance such facility or

facilities or refund any obligation of a development authority previously issued to finance such facility or facilities), development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred in connection therewith.

(vi) "Obligation" shall mean bonds, notes, or any instrument creating an obligation to pay or reserve moneys, having an initial term of not more than 35 years.

(vii) "Related entity" shall mean, with respect to a charitable trust, a functionally related business of such charitable trust, or any for profit or not for profit entity owned by or under common ownership with such charitable trust or owned by or under common ownership with a functionally related business of such charitable trust or otherwise affiliated with such charitable trust in a manner approved by the development authority.

(B) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or any municipality within such county in which is located, in either case, a convention and conference center which is at least 50,000 square feet in size and is owned in fee simple by a development authority and leased by such development authority to a charitable trust or a related entity thereof, and in which county or municipality there exists a private sector nonprofit organization which, on or before December 31, 2005, entered into a contract or a memorandum of understanding with the county or municipality and the aforementioned charitable trust pursuant to Code Section 48-13-55 relating to the expenditure of the proceeds of the tax collected under this Code section, may levy a tax under this Code section at a rate of 5 percent.

(C) The proceeds of the taxes collected under this paragraph shall be expended pursuant to a contract or a memorandum of understanding between the county or municipality, the private sector nonprofit organization, and the charitable trust, and such proceeds may be expended by or for the benefit of the county or municipality, the private sector nonprofit organization, or the charitable trust and related entities thereof for the purposes described in subparagraph (D) of this paragraph, provided that the expenditure of the proceeds of the tax levied on a charitable trust or a functionally related business thereof shall meet the requirements of Code Section 48-13-55.

(D) The proceeds of the taxes collected under this paragraph may be expended for any or all of the following purposes:

- (i) Promoting tourism, conventions, and trade shows;
- (ii) Promoting, attracting, stimulating, and developing conventions and tourism pursuant to Code Section 48-13-55; or
- (iii) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, infrastructure, and facilities which have the effect of promoting, attracting, stimulating, and developing conventions and tourism, including, but not limited to, a hotel facility and infrastructure and utility projects, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the county or municipality to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a development authority, shall constitute a contract with the holder of such obligation.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (3)) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or

local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D) may be so expended in any otherwise lawful manner.

(3.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center authority has been created by intergovernmental contract between a county and one or more municipalities located therein, and which trade and convention center authority is in existence on or before March 21, 1988, and which trade and convention center authority has not constructed or operated any facility before March 21, 1988, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (3.1)) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a trade and convention center, exhibit hall, conference center, performing arts center, accommodations facilities including food service, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local trade and convention center authority; or (C) for some combination of such purposes; provided, however, that at least 50 percent of the total taxes collected at the rate of 6 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph (3.1). Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau

authority created by local Act of the General Assembly for a municipality, a local building authority created by local constitutional amendment, and a trade and convention center authority created by intergovernmental contract between a county and one or more municipalities located therein, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities. The aggregate amount of all excise taxes imposed under this paragraph (3.1) and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent. Any tax levied pursuant to this paragraph (3.1) shall terminate not later than December 31, 2029, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph (3.1), secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (3.1) shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph (3.1) shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a building authority created by local constitutional amendment, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph (3.1), the term: “fund” or “funding” shall include the cost and expense of all things deemed necessary by a building authority created by local constitutional amendment for the construction and operation of a facility or facilities including but not limited to the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the building authority created by local constitutional amendment and any obligation of the building authority created by local constitutional amendment to refund any prior obligation of the building authority created by local constitutional amendment, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; “obligation” shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and “facility” or “facilities” shall mean any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph (3.1) and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph (3.1) by a building authority created by local constitutional amendment.

(3.2) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (3.2)) an amount equal to $33 \frac{1}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization as defined in subparagraph (A) of paragraph (8) of this subsection. In addition to the amounts required to be expended above, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph (3.2)) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of either marketing or operating trade and convention facilities. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, collected funds may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(3.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and which facility was completed and in operation prior to December 31, 1994, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend for the purpose of promoting tourism, conventions, and trade shows in each fiscal year during which the tax is collected under this paragraph (3.3) an amount which is equal to (A) an amount which is not less than the amount which would have been spent if the tax rate had not been increased to 6 percent and if the same percentage of tax collections expended for such purposes during

the immediately preceding fiscal year were expended for such purposes during the current fiscal year plus (B) an amount equal to 16 $\frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent.

(3.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and if such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purposes specified in subparagraphs (C) and (D) of this paragraph may be so expended in any otherwise lawful manner. In addition to the amounts otherwise required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 16 $\frac{2}{3}$ percent of the total taxes

collected at the rate of 6 percent for promoting tourism, conventions, and trade shows. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities.

(3.5) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated government) may levy a tax under this Code section at a rate of 6 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (3.5)) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization. In addition to the amounts thus required to be expended, a local consolidated government levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph (3.5)) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a civic center owned and operated by the local consolidated government.

(3.6) Reserved.

(3.7)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of:

- (i) Promoting tourism, conventions, and trade shows;
- (ii) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;
- (iii) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement

to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;

(iv) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

(v) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or

(vi) For some combination of such purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended pursuant to division (iii) or (iv) of subparagraph (A) of this paragraph may be so expended in any otherwise lawful manner.

(3.8)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 8 percent if there is located in such county or municipality an international horse park which was used in Olympic Games competition and which was in operation prior to January 1, 1999. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 4 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows; or

(ii) Supporting a publicly owned facility operated for convention and trade show purposes or any other similar or related purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities.

(C) In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 8 percent for the purpose of constructing, developing, supporting, and operating a nature center, nature park, wetlands education center, or nature museum for educational and recreational purposes or any other similar purposes. Amounts which are expended to meet the $16 \frac{2}{3}$ percent expenditure requirement of this subparagraph shall not be subject to the provisions of subparagraph (B) of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4)) an amount equal to at least $43 \frac{1}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28,

1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector-nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D) may be so expended in any otherwise lawful manner. In addition to the amounts required to be expended above, a county or municipality levying a tax pursuant to this paragraph (4) shall further expend (in each fiscal year during which the tax is collected under this paragraph (4)) an amount equal to at least 1 percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a museum of aviation and aviation hall of fame or an amount equal to at least $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) construction or expansion of either: (i) a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (ii) a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if such support is provided to a governmental entity with which the county or municipality levying the tax had in effect on January 1, 1987, a contractual agreement concerning governmental support of a convention and trade show facility; (iii) a facility owned or operated for convention and trade show purposes, visitor welcome center purposes, or any other similar or related purposes by a convention and visitors bureau authority created by local Act of the General Assembly for a municipality; (iv) a facility owned or operated for convention and trade show purposes or any other similar or related purposes by a coliseum and exhibit hall authority created by local Act of the General Assembly for a county and one or more municipalities therein; (v) a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993; (vi) a system of bicycle or pedestrian trails or walkways or both connecting a historic district within the levying county or municipality and surrounding areas (and with respect to this purpose (vi) construction and expansion shall include acquisition and development), if not later than December 1, 1993, the county or municipality

has adopted ordinances, resolutions, or contracts which: (I) designate such historic district; (II) obligate the county or municipality to provide funds to promote tourism to a historic district owners and business association which qualifies as a private sector nonprofit organization under subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal Revenue Code; (III) provide a “comprehensive plan” as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan which is designed to identify recreation needs through the year 2000 and which includes provisions for such system of trails or walkways or both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2002. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities; or (vii) a system of bicycle or pedestrian greenways, trails, walkways, or any combination thereof connecting a downtown historic or business district within the levying county or municipality and surrounding areas (and with respect to this purpose (vii) construction and expansion shall include acquisition and development), if not later than December 1, 2000, the county or municipality has adopted ordinances, resolutions, or contracts which: (I) designate such historic or downtown business district; (II) obligate the county or municipality to provide funds to promote tourism to a downtown business district owners and business association or chamber of commerce which qualifies as a private sector nonprofit organization under subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal Revenue Code; (III) provide a “comprehensive plan” as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan as a component of such comprehensive plan which includes provisions for such system of trails or walkways or both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2025; or (B) promoting tourism, conventions, and trade shows. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located

within the county) or municipality within a county in which a coliseum authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 1963, for the purpose of owning or operating a facility, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.1)) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 7 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding and supporting a facility owned or operated by such coliseum authority; or (C) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local coliseum authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (B) may be so expended in any otherwise lawful manner without the necessity of a contract. The aggregate amount of all excise taxes imposed under this paragraph (4.1) and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 12 percent. Any tax levied pursuant to this paragraph (4.1) shall terminate not later than December 31, 2028, provided that during any period during which there remains outstanding any obligation which is incurred prior to January 1, 1995, issued to fund a facility as contemplated by this paragraph (4.1), and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (4.1) shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph (4.1) shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a coliseum and exhibit hall authority, shall constitute a contract with the holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph (4.1), the term: "fund" and "funding" shall include the cost and expense of all things deemed necessary by a local coliseum authority for the construction, renovation, and operation of a facility including but not limited to the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local coliseum authority in connection

therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys incurred prior to January 1, 1995, and having an initial term of not more than 30 years; and "facility" shall mean a coliseum or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination thereof and for fairs, expositions, or exhibitions in connection therewith by a local coliseum authority.

(4.2) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated government) may levy a tax under this Code section at a rate of 7 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.2)) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent as follows: an amount equal to 28.58 of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization, an authority created by local Act of the General Assembly, or through a contract or contracts with any combination of such entities; an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of supporting a civic center owned or operated, or both, by the local consolidated government; and an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of maintaining and operating a performing arts facility.

(4.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.3)) amounts as follows: an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows which amount shall be expended only through a contract or contracts with the state, a department of state government, a state authority, an authority created by local Act of the General Assembly, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities; and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of

supporting a conference and convention center facility or similar facility owned or operated by an authority created by local Act of the General Assembly for convention and conference center purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on or prior to July 1, 1997, and if such conference and convention center facility or similar facility is substantially completed and in operation prior to December 31, 2001, which amounts shall be expended only through a contract or contracts with the state or an authority created by local Act of the General Assembly.

(4.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities owned and operated by the municipality or by a local authority created by local Act of the General Assembly for such purpose have been renovated which renovations are completed substantially on or before January 1, 2000, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.4)) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization defined in subparagraph (A) of paragraph (8) of this subsection; and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating community auditorium or theater facilities or a community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(4.5) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.5)) amounts as follows: (A) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of (i) promoting tourism, conventions, and trade shows; (ii) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (iii) supporting a facility owned or operated by a local government or local

authority for convention and trade show purposes or any other similar or related purposes; or (iv) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (iii) may be so expended in any otherwise lawful manner; and (B) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of operating, maintaining, and marketing of a conference center facility.

(4.6)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality within a county in which a convention center authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 2001, for the purpose of owning or operating a facility may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (4.6)) an amount equal to at least 40 percent of the total taxes collected at the rate of 5 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding and supporting a facility owned or operated by such convention and visitors authority; or (C) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention center authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (B) may be so expended in any otherwise lawful manner without the necessity of a contract. Any tax levied pursuant to this paragraph (4.6) shall terminate not later than December 31, 2037, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph (4.6), and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (4.6) shall not be diminished or impaired by the state, and no county or municipality levying the tax imposed by this paragraph (4.6) shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the

holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph (4.6), the terms “fund” and “funding” shall include the cost and expense of all things deemed necessary by a local convention center authority for the construction, renovation, and operation of a facility including, but not limited to, the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local convention center authority in connection therewith; “obligation” shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and “facility” shall mean a convention center or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination thereof and for fairs, expositions, or exhibitions in connection therewith by a local convention center authority.

(B) Notwithstanding any other provision of this subparagraph, a municipality located within a standard metropolitan statistical area recognized by the United States Department of Commerce, Bureau of the Census, which is levying a tax at a rate of 5 percent pursuant to paragraph (3) of this subsection on or before January 1, 1999, and in which an interstate highway is located, shall, on and after April 28, 1999, be authorized to levy and collect a tax under this Code section at a rate of 6 percent. A municipality levying a tax pursuant to this subparagraph shall expend, in each fiscal year during which the tax is collected under this subparagraph, an amount equal to the amount by which the total taxes collected under this subparagraph exceed the taxes which would have been collected at the rate of 5 percent for the purpose of dispensing information about the qualities of such municipality and promoting business in the municipality and to acquire for such use a building located in an area of high density retail businesses within the limits of such municipality. During any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this subparagraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this subparagraph shall not be diminished or impaired by the state, and no county or municipality

levying the tax imposed by this subparagraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the holder of such obligations.

(4.7) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 28.6 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization as defined in subparagraph (A) of paragraph (8) of this subsection. In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating trade and convention facilities which are managed or operated by the Georgia International and Maritime Trade Center Authority. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph. In addition to the amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of planning, constructing, marketing, or operating an attraction honoring the inventor of the cotton gin. Marketing and operating expenditures may include a preopening marketing program for such facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such

facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(5)(A)(i) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality is authorized to levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend an amount equal to at least 51.4 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to at least 32.14 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent for the purpose of: (I) promoting tourism, conventions, and trade shows; (II) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (III) supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (IV) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded in whole or in part by a grant of state funds; or (V) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities, except that amounts expended for those purposes specified in subdivisions (III) and (IV) of this division may be so expended in any otherwise lawful manner.

(ii) In addition to the amounts required to be expended under division (i) of this subparagraph, a county or municipality levying a tax pursuant to this paragraph (5) shall further expend (in each fiscal year during which the tax is collected under this paragraph (5)) an amount equal to 14.3 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to 39.3 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent toward funding a multipurpose domed stadium facility. Amounts so expended shall be expended only through a contract originally with the state, a department or agency of the state, or a state authority or through a contract or contracts with some combination of the above. Any

tax levied pursuant to this paragraph shall terminate not later than December 31, 2020, unless extended as provided in subparagraph (B) of this paragraph, provided that during any period during which there remains outstanding any obligation which is incurred prior to January 1, 1991, issued to fund a multipurpose domed stadium as contemplated by this paragraph (5), and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation incurred before January 1, 1991, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (5) shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(B) Notwithstanding the termination date stated in division (ii) of subparagraph (A) of this paragraph (5), notwithstanding paragraph (6) of this subsection (a), and notwithstanding subsection (b) of this Code section, a tax levied under this paragraph may be extended by resolution of the levying county or municipality and continue to be collected through December 31, 2050, if a state authority certifies: (i) that the same portion of the proceeds will be used to fund a successor facility to the multipurpose domed facility as is currently required to fund the multipurpose domed facility under division (ii) of subparagraph (A) of this paragraph; (ii) that such successor facility will be located on property owned by the state authority; and (iii) that the state authority has entered into a contract with a national football league team for use of the successor facility by the national football league team through the end of the new extended period of the tax collection. During the extended period of collection provided for in this subparagraph, the county or municipality levying the tax shall continue to comply with the expenditure requirements of division (i) of subparagraph (A) of this paragraph. During the extended period of collection, the county or municipality shall further expend (in each fiscal year during which the tax is collected during the extended period of collection) an amount equal to 39.3 percent of the total taxes collected at the rate of 7 percent toward funding the successor facility certified by the state authority. Amounts so expended shall be expended only through a contract with the certifying state authority. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2050, provided that during any

period during which there remains outstanding any obligation which is incurred to fund the successor facility certified by the state authority, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (5) shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(5.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a coliseum and exhibit hall authority has been created by local Act of the General Assembly for a county and one or more municipalities therein, and which local coliseum and exhibit hall authority is in existence on or before January 1, 1991, and which local coliseum and exhibit hall authority has not constructed or operated any facility before January 1, 1991, may levy a tax under this Code section at a rate of 8 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (5.1)) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 8 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a coliseum, exhibit hall, conference center, performing arts center, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local coliseum and exhibit hall authority or a downtown development authority; or (C) for some combination of such purposes; provided, however, that at least 50 percent of the total taxes collected at the rate of 8 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph (5.1). Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General

Assembly for a municipality, a local coliseum and exhibit hall authority, a downtown development authority, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities, notwithstanding any provision of paragraph (8) of this subsection to the contrary. The aggregate amount of all excise taxes imposed under this paragraph (5.1) and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent; provided, however, that any sales tax for educational purposes which is imposed pursuant to Article VIII, Section VI, Paragraph IV of the Constitution shall not be included in calculating such limitation. Any tax levied pursuant to this paragraph (5.1) shall terminate not later than December 31, 2028, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph (5.1), secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph (5.1) shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph (5.1) shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a local coliseum and exhibit hall authority or a downtown development authority, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph (5.1), the term: "fund" or "funding" shall include the cost and expense of all things deemed necessary by a local coliseum and exhibit hall authority or a downtown development authority for the construction and operation of a facility or facilities including but not limited to the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the local coliseum and exhibit hall authority or the downtown development authority and any obligation of the local coliseum and exhibit hall authority or the downtown development authority to refund any prior obligation of the local coliseum and exhibit hall authority or the downtown development authority, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; "facility" or "facilities" shall mean any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph (5.1) and any associated parking areas or improvements originally owned or oper-

ated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph (5.1) by a local coliseum and exhibit hall authority or a downtown development authority; and "downtown development authority" shall mean a downtown development authority created by local Act of the General Assembly for a municipality pursuant to a local constitutional amendment.

(5.2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities owned and operated by the municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 8 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $33 \frac{1}{3}$ percent of the total taxes collected at the rate of 8 percent under this subparagraph for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization defined in subparagraph (A) of paragraph (8) of this subsection.

(C) In addition to the amounts required to be expended pursuant to subparagraph (B) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 8 percent for the purpose of either marketing or operating community auditorium or theater facilities or community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(D) In addition to the amounts required to be expended pursuant to subparagraphs (B) and (C) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $33 \frac{1}{3}$ percent of the total taxes collected at the rate of 8 percent for general recreation purposes. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(5.3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which a convention and visitor's bureau authority has been created by local Act of the General Assembly which was in existence on July 1, 2005, and which authority is established specifically by such local Act as a permissible, but not exclusive, entity for the transfer of hotel and motel tax funds by the taxing entities of the county for which such authority was created may levy a tax under this Code section at a rate of 5 percent.

(B) The provisions of paragraph (2) of this subsection relating to expenditures shall apply to this paragraph; provided, however, that a county or municipality levying a tax pursuant to this paragraph shall be authorized, but not required, to expend funds through a convention and visitor's bureau authority created by local Act of the General Assembly.

(6) Following the termination of a tax under paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, any county or municipality which has levied a tax pursuant to paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall levy any future taxes under this Code section in a manner authorized by subsection (b) of this Code section.

(7) As used in this subsection, the term:

(A) "Fund" and "funding" mean the cost and expense of all things deemed necessary by a state authority for the construction and operation of a multipurpose domed stadium and a successor facility to such multipurpose domed stadium including but not limited to the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by an authority in connection therewith.

(B) "Obligation" means bonds, notes, or any instrument creating an obligation to pay or reserve moneys, and having an initial term of not more than 30 years.

(C) "Multipurpose domed stadium facility" means a multipurpose domed stadium facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes by the state, a department or agency of the state, a state authority, or a combination thereof.

(8) Reserved.

(9)(A) A county or municipality imposing a tax under paragraph (1), (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall prior to the imposition of the tax (if the tax is imposed on or after July 1, 1990) and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the proceeds of the tax shall be expended. Prior to the adoption of such budget plan, the county or municipality shall obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan.

(B)(i) The determination as to whether a county or municipality has complied with the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall be made for each fiscal year beginning on or after July 1, 1987, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7, and shall disclose:

(I) The amount of funds expended or contractually committed for expenditure as provided in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, whichever is applicable, during the fiscal year;

(II) The amount of tax receipts under this Code section during such fiscal year; and

(III) Expenditures as a percentage of tax receipts.

(ii) A county or municipality contractually expending funds to meet the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subparagraph noted in the audit report to the Department of Community

Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subparagraph to the Department of Revenue. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(10) Nothing in this article shall be construed to limit the power of a county or municipality to expend more than the required amounts, or all, of the total taxes collected under this Code section for the purposes described in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection.

(11) Reserved.

(12) Reserved.

(b)(1) Except as provided in paragraphs (2) and (3) of subsection (a) of this Code section, any new excise taxes which are first levied pursuant to this Code section after July 1, 2008, or any new excise tax which is first levied following the termination of a previous levy pursuant to this Code section after July 1, 2008, shall be levied pursuant to this subsection.

(2) The governing authority of each municipality in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(3) Within the territorial limits of the special district located within the county, each county in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(4) The levy of an excise tax pursuant to this subsection shall be conditioned upon the county or municipality adopting a resolution

which specifies the subsequent tax rate, identifies the projects or tourism product development purposes, and specifies the allocation of proceeds and, subsequent to such resolution, the enactment of a local Act by the General Assembly.

(5) In accordance with the terms of the resolution adopted by the county or municipality, the local Act of the General Assembly shall provide that:

(A) In each fiscal year during which a tax is collected under paragraph (2) or (3) of this subsection, an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent shall be expended for promoting tourism, conventions, and trade shows by the destination marketing organization designated by the county or municipality levying the tax; and

(B) The remaining amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent which are not otherwise expended under subparagraph (A) of this paragraph shall be expended for tourism product development.

(6) A county or municipality levying a tax pursuant to this subsection shall expend an amount equal to the amount of total taxes collected under this subsection which would have been collected at a rate of 5 percent in accordance with the provisions of paragraph (3) of subsection (a) of this Code section.

(7)(A) Any municipality which is levying an excise tax under paragraph (5) of subsection (a) of this Code section, so long as any obligation as described in division (a)(5)(A)(ii) or subparagraph (a)(5)(B) of this Code section remains outstanding, shall leave such excise tax in effect at the rate of 7 percent and may levy up to an additional 1 percent excise tax under this paragraph so long as the combined rate does not exceed 8 percent.

(B)(i) Such additional excise tax shall not be deemed to violate the provisions of subsection (d) of this Code section.

(ii) Such additional excise tax shall not count toward or be subject to the 14 percent rate limitations of subsection (c.1) of Code Section 48-8-6 and subsection (d) of Code Section 48-8-201.

(C) Any taxes collected in excess of 7 percent shall be expended by the municipality for the promotion of conventions and tradeshow by a not for profit destination marketing organization located within the municipality and in existence and operation on January 1, 2011, through a contract or contracts with the state, a department of state government, or a state authority. At least 80 percent of such tax amounts shall be segregated by the destination

marketing organization and used in securing major conventions at facilities containing at least 1.3 million square feet of floor space used for convention hall purposes and events at facilities containing at least 70,000 seats used for major events under the control of a state authority, and amounts so segregated may be held by the destination marketing organization and expended in fiscal years subsequent to the fiscal year in which the taxes were collected.

(D) Any municipal levy of any additional excise tax under this paragraph must be approved by local Act and shall also comply with the resolution requirements contained in paragraph (4) of this subsection in regard to the additional excise tax levied under this paragraph only. The local Act of the General Assembly shall provide that the first 7 percent in excise tax levied under the authority of paragraph (5) of subsection (a) of this Code section shall continue to be levied under that paragraph and all amounts collected thereunder shall be expended as required therein and that the additional amounts collected under the provisions of this paragraph shall be expended as required in this paragraph.

(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county (within the territorial limits of the special district located within the county) and any municipality which is levying a tax under this Code section at the rate of 6 percent under paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a tax under this Code section at the rate of 7 percent in the manner provided in this subsection. Both the county and municipality shall adopt a resolution which shall specify that an amount equal to the total amount of taxes collected under such levy at a rate of 6 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4) or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify the manner of expenditure of funds for an amount equal to the total amount of taxes collected under such levy that exceeds the amount that would be collected at the rate of 6 percent for any tourism, convention, or trade show purposes, tourism product development purposes, or any combination thereof. Each resolution shall be required to be ratified by a local Act of the General Assembly. Only when both such local Acts have become law, the governing authority of the county and municipality shall be authorized to levy an excise tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(c) Nothing in this article shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

(d) At no time shall a county or municipality levy simultaneously more than one tax under this article.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, for any excise tax levied pursuant to subsection (b) of this Code section, a county or municipality imposing a tax under this article shall, prior to the imposition of the tax or changing the rate of the levy of the tax and prior to each fiscal year thereafter in which the tax is imposed, adopt a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, the county or municipality shall obtain from the destination marketing organization or state authority with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such organization. Such destination marketing organization or state authority expenditure budget plan shall be made a part of the county or municipal budget plan.

(2) This paragraph shall apply to a county or municipality which is levying the tax under subsection (a) of this Code section on January 1, 2008, and is expending the proceeds of the tax through a contract or contracts with an authorized entity or entities other than a destination marketing organization. In the event such county or municipality ceases such levy in order to levy an excise tax under subsection (b) of this Code section, it may continue to expend the proceeds of the tax through a contract or contracts with the same entity or entities other than a destination marketing organization if, prior to each fiscal year in which the tax is imposed, the county or municipality adopts a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, such county or municipality shall obtain from such entity or entities with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such entity or entities. The budget plan of such entity or entities shall be made a part of the county or municipal budget plan.

(f) A county or municipality expending funds of the tax levied under subsection (b) of this Code section pursuant to a contract shall require the destination marketing organization or state authority to provide audit verification that such destination marketing organization or state authority makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The

state auditor shall report all instances of noncompliance with this subsection noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subsection to the Department of Community Affairs. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(g)(1) Any action by a local governing authority to impose or change the rate of the tax authorized under this article shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(2) In the case of a county or municipality which has adopted an ordinance ceasing the levy under the applicable paragraph of subsection (a) of this Code section in order to levy an excise tax under subsection (b) of this Code section, such levy under subsection (b) of this Code section shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(h) The tax authorized by this article shall not apply to:

(1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;

(2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;

(3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

(4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.

(i) No tax under this article may be levied or collected by a county outside the territorial limits of the special district located within the county.

(j) Any requirement that a tax under this article be expended in the fiscal year in which it is collected shall be satisfied so long as fiscal year expenditures conform with the budget plan required in either paragraph (9) of subsection (a) or subsection (e) of this Code section. (Ga. L. 1975, p. 1002, §§ 2, 3; Code 1933, § 91A-6202, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 639, § 1; Ga. L. 1987, p. 635, § 1; Ga. L. 1988, p. 1866, § 1; Ga. L. 1989, p. 1, § 1; Ga. L. 1989, p. 62, § 13; Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 292, §§ 1-5; Ga. L. 1992, p. 3035, §§ 1-4; Ga. L. 1993, p. 442, § 1; Ga. L. 1993, p. 995, §§ 3, 4; Ga. L. 1994, p. 793, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 578, §§ 1-4; Ga. L. 1996, p. 1407, §§ 1-5; Ga. L. 1997, p. 930, §§ 1-4; Ga. L. 1997, p. 959, §§ 1-4; Ga. L. 1997, p. 1417, §§ 1-4; Ga. L. 1998, p. 19, § 1; Ga. L. 1998, p. 894, §§ 1-4; Ga. L. 1999, p. 81, § 48; Ga. L. 1999, p. 663, § 1; Ga. L. 1999, p. 769, §§ 1-4; Ga. L. 2000, p. 214, §§ 1-8; Ga. L. 2000, p. 1303, § 1; Ga. L. 2000, p. 1325, § 1A; Ga. L. 2000, p. 1364, §§ 1-4; Ga. L. 2001, p. 1191, §§ 1-4; Ga. L. 2002, p. 979, §§ 1-4; Ga. L. 2004, p. 403, § 1; Ga. L. 2005, p. 532, § 1/HB 505; Ga. L. 2005, p. 1523, §§ 1-6/HB 374; Ga. L. 2006, p. 667, §§ 1-4/HB 1030; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2008, p. 181, § 23/HB 1216; Ga. L. 2008, p. 887, §§ 1, 2/HB 302; Ga. L. 2008, p. 1032, §§ 2-9, 12/HB 1168; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 809, §§ 1, 2, 3/HB 903; Ga. L. 2011, p. 517, § 1/HB 382.)

The 2010 amendment, effective June 3, 2010, designated the existing provisions of paragraph (a)(5) as subparagraph (a)(5)(A); rewrote subparagraph (a)(5)(A); added subparagraph (a)(5)(B); in subparagraph (a)(7)(A), substituted “mean” for “means” near the beginning and inserted “and a successor facility to such multipurpose domed stadium” in the middle; de-

leted “incurred prior to January 1, 1991” following “moneys” in the middle of subparagraph (a)(7)(B); and added subsection (b.1).

The 2011 amendment, effective May 11, 2011, added paragraph (b)(7).

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Collection of taxes.

In a city’s action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city’s ordinance via a permanent injunction. The company had contracted with

the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Trial court did not err under O.C.G.A. § 48-13-51(a)(1)(B)(I) when the court determined that the rent for occupying a hotel room in a city was the room rate paid by a consumer, rather than the negotiated

wholesale rate between an online travel company and a hotel, because the retail room rate was the taxable amount or rent under a city's ordinance. *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

Cited in *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-53.2. Innkeepers and taxes.

JUDICIAL DECISIONS

On line travel company not innkeeper and payment of taxes responsibility of company. — In a city's action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et

seq., and a city's ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Cited in *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

48-13-53.3. Taxes; extensions and returns; failure of innkeeper to make return and pay required tax.

JUDICIAL DECISIONS

Necessity to follow procedures before filing suit to collect tax. — Municipalities failed to exhaust administrative remedies prior to litigation to recover excise taxes from Internet travel agencies which arranged accommodation for their customers since the procedures of O.C.G.A. § 48-13-53.3(b) were not op-

tional, and the municipalities were required to estimate, assess, and attempt to collect the excise taxes from the travel agencies before pursuing litigation. *City of Rome v. Hotels.com, L.P.*, No. 4:05-CV-249-HLM, 2007 U.S. Dist. LEXIS 98522 (N.D. Ga. May 10, 2007).

48-13-55. Facility operated by charitable trust or functionally related business; license fees; limitation on or applicability of tax levies.

(a) A charitable trust, or a functionally related business of a charitable trust, which regularly furnishes for value rooms, lodgings, or accommodations shall be subject to local licensure by, or required to pay a business or occupation tax to, a county or municipality only to the extent provided in this Code section. Further, such a charitable trust, or such a functionally related business of a charitable trust, shall be subject to taxes levied under Code Section 48-13-51 only to the extent provided in this Code section.

(b) Any license fee of any type, whether a flat fee or based on gross receipts, charged by a county or municipality to a charitable trust, or to

a functionally related business of a charitable trust or any affiliated activity, shall not exceed \$200.00 per year.

(c) Any tax levied by a county or municipality under Code Section 48-13-51 shall apply to a charitable trust, or a functionally related business of a charitable trust, only if the levy and collection of the tax is approved in advance in writing by the Board of Natural Resources. The Board of Natural Resources may revoke its approval at will. Amounts collected and remitted under the authority of this Code section shall be expended solely for promoting, attracting, stimulating, and developing conventions and tourism. The expenditure of the funds shall only be made under a written agreement between the charitable trust or its functionally related business and the local government. The agreement governing the expenditure of the funds must be approved in writing by the Board of Natural Resources before any taxes are collected and remitted and before any funds are spent.

(d) For purposes of this Code section, the term “charitable trust” means any trust or other entity covered by Article 9 or 10 of Chapter 12 of Title 53. For purposes of this Code section, the term “functionally related business” means a business entity, whether or not incorporated, which is owned by such a charitable trust and which constitutes a functionally related business within the meaning of Section 4942(j)(4) of the federal Internal Revenue Code.

(e) This Code section (rather than conflicting provisions in Code Section 48-13-51) shall govern the licenses and license fees of, and the levy, collection, and expenditure of the taxes authorized by this article as applied to, a charitable trust or a functionally related business of a charitable trust. (Code 1981, § 48-13-55, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 810, § 8; Ga. L. 2010, p. 579, § 17/SB 131.)

The 2010 amendment, effective July 1, 2010, in subsection (d), substituted “Article 9 or 10” for “Article 6” near the end of the first sentence and inserted “federal” near the end of the last sentence.

ARTICLE 6

EXCISE TAX ON SALE OR USE OF ENERGY

Effective date. — This article becomes effective January 1, 2013.

Editor’s notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed imme-

diately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-13-110. (Effective January 1, 2013) Definitions.

As used in this article, the term:

- (1) "Dealer" has the same meaning as in Code Section 48-8-2.
- (2) "Energy" has the same meaning as in Code Section 48-8-3.2.
- (3) "Local sales and use tax" means any of the following:

(A) The county special purpose local option sales and use tax under Part 1 of Article 3 of Chapter 8 of this title;

(B) The joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title;

(C) The homestead option sales and use tax under Article 2A of Chapter 8 of this title;

(D) The tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; or

(E) The water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title.

- (4) "Purchaser" means any person who purchases energy and who would have been liable for sales and use tax on such energy but for the exemption provided for in Code Section 48-8-3.2. (Code 1981, § 48-13-110, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-111. (Effective January 1, 2013) Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each district shall include all of the territory within the county except territory located within the boundaries of any municipality that imposes an excise tax on energy under this article. (Code 1981, § 48-13-111, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-112. (Effective January 1, 2013) Levy and collection of excise tax on sale or use of energy.

(a)(1) Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(2) The governing authority of each municipality in this state may, subject to the conditions of Code Section 48-13-115, levy and collect an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(3) The excise tax levied pursuant to this article shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2; and

(D) On or after January 1, 2016, such excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2.

(b) Any county or municipality which imposes the excise tax under this article during the phase-in period provided for in this Code section

shall levy such excise tax at the amount provided for under the applicable year of the phase in. Any county or municipality which imposes such excise tax on or after January 1, 2016, shall impose it at the rate specified under subparagraph (a)(3)(D) of this Code section.

(c) The excise tax levied pursuant to this article shall be imposed only at the time that sales and use tax on the sale or use of such energy would have been due and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2. The excise tax shall be due and payable in the same manner as would be otherwise required under Article 1 of Chapter 8 of this title except as otherwise provided under this article. The excise tax shall be a debt of the purchaser of energy until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. The dealer collecting the excise tax shall remit the excise tax to the governing authority imposing the excise tax. Every dealer subject to an excise tax levied as provided in this article shall be liable for the excise tax at the applicable rate on the charges actually collected or the amount of excise taxes collected from the purchasers, whichever is greater.

(d) A county or municipality levying an excise tax as provided in this subsection shall only levy such excise tax initially by ordinance and at the equivalent rate as determined under paragraph (3) of subsection (a) of this Code section. Following such initial imposition, on or after January 1, 2016, the rate of the tax under this article shall be controlled by the maximum amount of local sales and use tax in effect in the special district, but in no event more than 2 percent; however, this 2 percent limitation shall not apply in a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, in which case there shall be a 3 percent limitation. In the event the total rate of local sales and use taxes in effect in the special district decreases from 2 percent to 1 percent, the rate of the excise tax under this article shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective. In the event the total rate of local sales and use taxes in effect in the special district increases from 1 percent to 2 percent, the rate of the excise tax under this article shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

(e) An excise tax under this article shall not be levied or collected by a county or municipality outside the territorial limits of the special district located within the county. (Code 1981, § 48-13-112, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-113. (Effective January 1, 2013) Notice of meeting to determine levy.

Prior to the adoption of the ordinance levying an excise tax under this article, the county governing authority within a special district shall

meet and confer with each of the municipalities within the special district. Any county that desires to have an excise tax under this article levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district. If the governing authority of such county does not deliver or mail such notice within 30 days of the date of the written request of the mayor or chief elected official of a municipality within the special district, then such mayor or chief elected official shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district and to the county governing authority. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each municipality are to discuss whether or not the excise tax should levied be within the special district. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the adoption of any ordinance levying an excise tax under this article. (Code 1981, § 48-13-113, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-114. (Effective January 1, 2013) Adoption of ordinance levying excise tax within special district.

(a)(1) Following the meeting required under Code Section 48-13-113, the governing authority of the county within the special district shall enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax that provides for the distribution of the proceeds as provided in subsection (c) of this Code section. Following the execution of such agreement, the governing authority of such county shall be authorized to adopt an ordinance levying the excise tax.

(2) If a municipality elects not to participate in such excise tax by not signing such agreement, then such municipality shall not receive any proceeds from the excise tax. In such event, any proportionate share that would have been distributed to such municipality under an applicable local sales and use tax as provided in subsection (c) of this Code section shall instead be distributed to the general fund of the county.

(b) The excise tax proceeds shall be allocated and distributed by the county governing authority at the end of each calendar month. Of such excise tax proceeds, an amount equal to 1 percent of the proceeds collected by the county shall be paid into the general fund of the county to defray the costs of collection and administration. The remainder of the proceeds shall be distributed in accordance with the intergovernmental agreement as provided in subsection (c) of this Code section.

(c) The excise tax proceeds shall be allocated and distributed by the county governing authority within 30 days following the end of each

calendar month in the manner provided in this subsection. Such proceeds shall not be subject to any use or expenditure requirements provided for under any of the local sales and use taxes but shall be authorized to be expended in the same manner as otherwise would have been required under such local sales and use taxes or may be expended for any lawful purpose. Of such excise tax proceeds:

(1) If two such local sales and use taxes are in effect in the special district, an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the first local sales and use tax and an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the second local sales and use tax; or

(2) If only one such local sales and use tax is in effect in the special district, then the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the local sales and use tax. (Code 1981, § 48-13-114, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-115. (Effective January 1, 2013) Nonparticipation of county within special district to enter into intergovernmental agreement.

(a)(1) Within 30 days following the meeting required under Code Section 48-13-113, if the governing authority of the county within the special district fails or refuses to enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax, then the governing authority of each municipality wishing to levy the excise tax shall be authorized to adopt an ordinance levying the excise tax within the corporate limits of such municipality. If a county elects not to participate in such excise tax by not signing such agreement, then the county shall not receive any proceeds from the excise tax. The proceeds of such excise tax shall be deposited in the general fund of each municipality.

(2) If, subsequent to the levy of an excise tax by a municipality under paragraph (1) of this subsection, a county determines to commence proceedings for the imposition of the excise tax under this article, then proceedings for such imposition shall commence in the

same manner as otherwise provided under Code Section 48-13-113. Except as to a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, if a county complies with the requirements of this article and enacts an ordinance imposing the excise tax, the excise tax levied by such municipality shall cease on the day immediately prior to the day the new tax levied by the county commences. If such municipality elects not to participate, its current excise tax under this article shall terminate on the date the county's tax levy becomes effective, and it shall not receive any proceeds under the county levy.

(b)(1) If a municipality located within a special district where the excise tax is imposed by the county is not participating in such excise tax and is not receiving proceeds of that excise tax, the governing authority of that nonparticipating municipality may give written notice to the governing authority of the county and the governing authority of each participating municipality within the special district of its decision to opt in to the existing intergovernmental agreement. Within 60 days of the date of such notice, an amended intergovernmental agreement shall be executed by the governing authority of the municipality exercising such opt in and the governing authorities of the county and each currently participating municipality.

(2) Notwithstanding the provisions of paragraph (1) of subsection (a) of Code Section 48-13-116, when an amended intergovernmental agreement is executed pursuant to paragraph (1) of this subsection, the revised distribution of proceeds thereunder shall not become effective until the first day of the first month which is at least 12 months after the execution of such amended intergovernmental agreement. The distribution of proceeds of the excise tax shall continue under the prior intergovernmental agreement until the date provided for in this paragraph.

(c) Any county that desires to have an excise tax under this article levied county wide within the special district commencing January 1, 2013, shall deliver the written notice pursuant to Code Section 48-13-113 no later than September 1, 2012. (Code 1981, § 48-13-115, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 4/SB 332.)

The 2012 amendments. — The first 2012 amendment, effective January 1, 2013, enacted this Code section. The second 2012 amendment, effective January 1, 2013, rewrote this Code section. See the Code Commission note regarding the effect of these two amendments.

Code Commission notes. — Pursuant

to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 954, § 4/SB 332, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-13-116. (Effective January 1, 2013) Imposition of excise tax; effective date; limitations.

(a)(1) Except as otherwise provided in Code Section 48-13-115, an excise tax imposed under this article shall become effective on the first day of the next succeeding month following adoption of the ordinance unless otherwise specified in the intergovernmental agreement required by subsection (a) of Code Section 48-13-114, except that no such tax shall be imposed prior to January 1, 2013.

(2) If services are regularly billed on a monthly basis, however, the excise tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The excise tax shall cease to be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption date of an ordinance terminating the excise tax.

(c) At no time shall more than a single 2 percent excise tax under this article be imposed within a special district or a municipality, except that in the event a municipality levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, a single 3 percent excise tax may be imposed within such municipality.

(d) Following the termination of an excise tax under this article, the governing authority of a county within a special district or the mayor or chief elected official of a municipality in the special district in which an excise tax authorized by this article is in effect may initiate proceedings for the reimposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. (Code 1981, § 48-13-116, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 5/SB 332.)

The 2012 amendments. — The first 2012 amendment, effective January 1, 2013, enacted this Code section. The second 2012 amendment, effective January 1, 2013, rewrote this Code section. See the Code Commission note regarding the effect of these two amendments.

Code Commission notes. — Pursuant

to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 954, § 5/SB 332, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-13-117. (Effective January 1, 2013) Procedures for manner of payment and collection.

The manner of payment and collection of the excise tax and all other procedures related to the tax, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax under this article, shall be as provided by each county and municipality electing to

exercise the powers conferred by this article. (Code 1981, § 48-13-117, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-118. (Effective January 1, 2013) Separate revenue schedule required.

As a part of the audit report required under Code Section 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this article. (Code 1981, § 48-13-118, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

CHAPTER 14

GRANTS AND SPECIAL REVENUE DISBURSEMENTS

Sec.	Sec.
48-14-3. Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county	audits; unexpended funds; payment; minimum annual amount.

48-14-3. Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county audits; unexpended funds; payment; minimum annual amount.

(a) The funds made available by appropriations of the General Assembly for distribution to the counties to be used exclusively for the construction and maintenance of the public roads shall be distributed by the Office of the State Treasurer before the tenth day of each month to each county fiscal officer. The amounts distributable each month shall be one-twelfth of the amounts provided for each county in the following table:

County	Amount
Appling	\$ 38,074.69
Atkinson	27,609.69
Bacon*	*21,562.95
Baker	22,251.20
Baldwin	18,840.71
Banks*	*20,573.60
Barrow	24,217.62
Bartow*	*36,861.04
Ben Hill	25,016.48

Berrien	39,448.11
Bibb	23,108.44
Bleckley*	*17,998.86
Brantley	28,135.09
Brooks*	*38,865.35
Bryan	28,423.90
Bulloch*	*64,465.57
Burke*	*75,000.00
Butts	18,462.78
Calhoun	21,406.25
Camden	26,030.40
Candler*	*24,844.41
Carroll	50,097.45
Catoosa	16,941.89
Charlton	32,113.99
Chatham	27,001.32
Chattahoochee	11,783.12
Chattooga*	*22,453.99
Cherokee*	*40,216.23
Clarke	13,500.66
Clay	13,973.83
Clayton	19,101.87
Clinch	44,766.64
Cobb*	*35,917.78
Coffee	39,841.39
Colquitt*	*43,774.21
Columbia*	*24,709.22
Cook*	*18,720.87
Coweta*	*37,690.62
Crawford	24,574.03
Crisp*	*33,241.61
Dade	18,690.15
Dawson	27,833.97
Decatur*	*43,918.62
DeKalb*	*44,573.07
Dodge	42,198.01
Dooly*	*42,342.42
Dougherty	23,102.29
Douglas*	*21,612.13
Early	31,656.19
Echols	26,310.00
Effingham*	*51,077.60
Elbert*	*33,014.24

Emanuel*	*60,964.97
Evans	18,094.08
Fannin*	*19,885.36
Fayette	23,805.90
Floyd*	*34,243.25
Forsyth*	*23,615.40
Franklin	30,900.35
Fulton*	*75,000.00
Gilmer*	*27,572.82
Glascocock	13,257.93
Glynn	24,798.32
Gordon*	*26,509.72
Grady	45,755.99
Greene*	*29,895.63
Gwinnett*	*46,250.67
Habersham	28,125.86
Hall	37,592.30
Hancock*	*31,047.83
Haralson*	*29,520.79
Harris	37,254.32
Hart*	*28,669.70
Heard*	*26,617.25
Henry*	*32,246.12
Houston	26,949.09
Irwin*	*22,583.03
Jackson	29,102.93
Jasper	37,595.37
Jeff Davis*	*25,071.77
Jefferson*	*57,867.87
Jenkins*	*22,524.65
Johnson	23,197.54
Jones	27,327.01
Lamar*	*17,190.76
Lanier	31,063.20
Laurens*	*64,652.00
Lee*	*26,869.20
Liberty	36,990.10
Lincoln	21,609.04
Long	19,292.36
Lowndes	46,859.02
Lumpkin	22,868.78
McDuffie*	*23,947.23
McIntosh	17,857.49

Macon	48,727.38
Madison*	*29,914.07
Marion*	*23,332.74
Meriwether	43,393.22
Miller*	*17,267.58
Mitchell	48,825.44
Monroe	39,758.43
Montgomery*	*23,179.10
Morgan*	*30,387.24
Murray*	*20,075.85
Muscogee	27,078.13
Newton	35,290.98
Oconee	17,820.62
Oglethorpe*	*28,556.04
Paulding*	*32,301.42
Peach	15,049.21
Pickens	28,205.75
Pierce	23,108.43
Pike*	*18,398.25
Polk	22,318.80
Pulaski	19,621.12
Putnam*	*26,248.55
Quitman	10,741.53
Rabun	20,321.66
Randolph*	*21,738.09
Richmond*	*38,043.96
Rockdale	18,213.91
Schley	16,932.66
Screven*	*60,547.13
Seminole*	*19,393.75
Spalding*	*21,950.09
Stephens*	*20,109.65
Stewart	20,051.27
Sumter*	*38,590.89
Talbot	31,284.41
Taliaferro	15,122.95
Tattnall*	*37,315.77
Taylor	32,104.78
Telfair	45,104.61
Terrell	22,899.50
Thomas	54,850.65
Tift*	*25,382.10
Toombs*	*34,163.37

Towns	16,170.68
Treutlen	23,154.52
Troup	32,952.79
Turner*	*24,466.49
Twiggs*	*28,918.57
Union	19,396.83
Upson*	*22,893.36
Walker	35,764.15
Walton*	*30,774.37
Ware	42,609.73
Warren	28,371.66
Washington*	*60,362.76
Wayne*	*32,949.72
Webster	15,325.74
Wheeler	26,162.52
White	17,537.95
Whitfield*	*23,028.55
Wilcox	32,157.02
Wilkes*	*25,809.18
Wilkinson*	*27,443.76
Worth*	*42,265.60
TOTAL	\$4,810,846.70

*Counties with this symbol have increased amounts to figures shown in order to bring them to the average of 14.13 percent.

(b)(1) The governing authority of each county shall submit to the state auditor a copy of its regular annual audit not later than 180 days after the end of the fiscal year for which the audit was made. If an extension of time is granted to a county for the filing of the audit required by Code Section 36-81-7 or the correction of deficiencies in such an audit, then the same extension of time shall apply for purposes of this paragraph. The state auditor shall compare the amount of funds distributed to each county in the year of the audit against the amount of funds expended by the county in that year for the purposes authorized by this Code section. In the event the state auditor determines that the amount so expended in any year is less than the amount distributed, he shall certify the amount of the difference to the Office of the State Treasurer, which shall deduct and withhold the certified amount from the next funds to be distributed to the underexpending county under this Code section. In the event a county expending less than the amount distributed to it certifies at the time of the submission of its audit or within a reasonable time thereafter that it is accumulating the unexpended funds for a specified allowable purpose and submits proof of the deposit or investment of the funds, the county shall be deemed to have complied

with this subsection, except that the amount of the unexpended funds shall be added to the amount of funds distributed to the county in the next succeeding year or years for the purpose of making the comparison and determination provided in this Code section. Upon the request of the Governor or the commissioner of transportation, the state auditor may audit the books and records of each county to verify the accuracy of the audits filed with him and to ensure that the expenditure of the funds has been made for the purposes intended.

(2) The procedure provided in this subsection shall apply to any grants to counties under any provision of law from motor fuel tax funds.

(3) The Secretary of State shall mail a copy of this subsection to the chairman and the clerk of the governing authority of each county.

(c) The Office of the State Treasurer shall pay to each county the amount provided in this Code section in 12 equal monthly installments. The amount necessary to make each monthly payment to the proper officials of the various counties is appropriated for the purpose and made a special and continuing appropriation.

(d) If the Office of Planning and Budget fails to make available for any quarter of a fiscal year a sum sufficient to pay in full the appropriation provided in subsection (c) of this Code section, the distribution of funds to the counties for that quarter shall be on the basis existing prior to January 1, 1979. No county shall receive less than \$17,500.00. (Ga. L. 1923, p. 41, § 2; Ga. L. 1925, p. 66, § 1; Code 1933, § 92-1410; Code 1933, § 92-1404, enacted by Ga. L. 1937, p. 167, § 1; Ga. L. 1937-38, Ex. Sess., p. 258, § 1; Ga. L. 1945, p. 316, § 1; Ga. L. 1949, Ex. Sess., p. 19, § 3; Ga. L. 1966, p. 203, § 1; Ga. L. 1969, p. 845, § 1; Code 1933, § 92-1404, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-7003, enacted by Ga. L. 1979, p. 5, § 110; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 818, § 7; Ga. L. 1985, p. 149, § 48; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" three times throughout this Code section.

CHAPTER 17

COIN OPERATED AMUSEMENT MACHINES

Sec.	Sec.
48-17-1. Definitions.	48-17-9. Payment and collection of annual permit fee; permit stickers.
48-17-2. License fees; issuance of license; display of license; control number; duplicate certificates; application for license or renewal.	48-17-11. Permit fees for additional machines; penalty fee.

Sec.	Sec.
48-17-14. Validity of prior existing obligations to state.	48-17-16. Penalties for violations by business owners or operators.
48-17-15. Limitation on percent of monthly gross retail receipts derived from machines; monthly verified reports; issuance of fine or revocation or suspension of license for violations; submission of electronic reports.	48-17-17. Local government to adopt any combination of a list of ordinance provisions relating to bona fide coin operated amusement machines.

48-17-1. Definitions.

As used in this chapter, the term:

(1) “Applicant” or “licensee” means owner as defined in this Code section including an owner’s officers, directors, shareholders, individuals, members of any association or other entity not specified, and, when applicable in context, the business entity itself.

(2) “Bona fide coin operated amusement machine” means:

(A) Every machine of any kind or character used by the public to provide amusement or entertainment whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, or similar object and the result of whose operation depends in whole or in part upon the skill of the player, whether or not it affords an award to a successful player pursuant to subsections (b) through (g) of Code Section 16-12-35, and which can be legally shipped interstate according to federal law. Examples of bona fide coin operated amusement machines include, but are expressly not limited to, the following:

- (i) Pinball machines;
- (ii) Console machines;
- (iii) Video games;
- (iv) Crane machines;
- (v) Claw machines;
- (vi) Pusher machines;
- (vii) Bowling machines;
- (viii) Novelty arcade games;
- (ix) Foosball or table soccer machines;
- (x) Miniature racetrack, football, or golf machines;
- (xi) Target or shooting gallery machines;

- (xii) Basketball machines;
- (xiii) Shuffleboard games;
- (xiv) Kiddie ride games;
- (xv) Skee-ball machines;
- (xvi) Air hockey machines;
- (xvii) Roll down machines;
- (xviii) Trivia machines;
- (xix) Laser games;
- (xx) Simulator games;
- (xxi) Virtual reality machines;
- (xxii) Maze games;
- (xxiii) Racing games;
- (xxiv) Coin operated pool tables or coin operated billiard tables as defined in paragraph (3) of Code Section 43-8-1; and
- (xxv) Any other similar amusement machine which can be legally operated in Georgia; and

(B) Every machine of any kind or character used by the public to provide music whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, or similar object such as jukeboxes or other similar types of music machines.

The term "bona fide coin operated amusement machine" does not include the following:

- (i) Coin operated washing machines or dryers;
- (ii) Vending machines which for payment of money dispense products or services;
- (iii) Gas and electric meters;
- (iv) Pay telephones;
- (v) Pay toilets;
- (vi) Cigarette vending machines;
- (vii) Coin operated scales;
- (viii) Coin operated gumball machines;
- (ix) Coin operated parking meters;

(x) Coin operated television sets which provide cable or network programming;

(xi) Coin operated massage beds; and

(xii) Machines which are not legally permitted to be operated in Georgia.

(2.1) "Business owner or business operator" means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use and play by the public.

(2.2) "Class A machine" means a bona fide coin operated amusement machine that is not a Class B machine, does not allow a successful player to carry over points won on one play to a subsequent play or plays, and:

(A) Provides no reward to a successful player;

(B) Rewards a successful player only with free replays or additional time to play;

(C) Rewards a successful player with noncash merchandise, prizes, toys, gift certificates, or novelties in compliance with the provisions of subsection (c) or paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35;

(D) Rewards a successful player with points, tokens, tickets, or other evidence of winnings that may be exchanged only for items listed in subparagraph (C) of this paragraph; or

(E) Rewards a successful player with any combination of items listed in subparagraphs (B), (C), and (D) of this paragraph.

(2.3) "Class B machine" means a bona fide coin operated amusement machine that allows a successful player to accrue points on the machine and carry over points won on one play to a subsequent play or plays in accordance with paragraph (2) of subsection (d) of Code Section 16-12-35 and:

(A) Rewards a successful player in compliance with the provisions of paragraphs (1) and (2) of subsection (d) of Code Section 16-12-35; and

(B) Does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35.

(3) "Commissioner" means the state revenue commissioner.

(3.1) "Location license" means the initial and annually renewed license which every business owner or business operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally any such machine in this state.

(3.2) "Location license fee" means the fee paid to obtain the location license.

(4) "Master license" means the certificate which every owner of a bona fide coin operated amusement machine must purchase and display in the owner's or operator's place of business where the machine is located for commercial use by the public for play in order to legally operate the machine in the state.

(4.1) "Net receipts" means the entire amount of moneys received from the public for play of an amusement machine, minus the amount of expenses for noncash redemption of winnings from the amusement machine, and minus the amount of moneys refunded to the public for malfunction of the amusement machine.

(5) "Operator" means any person, individual, firm, company, association, corporation, or other business entity who exhibits, displays, or permits to be exhibited or displayed, in a place of business other than his own, any bona fide coin operated amusement machine in this state.

(6) "Owner" means any person, individual, firm, company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state.

(7) "Permit fee" means the annual per machine charge which every owner of a bona fide coin operated amusement machine in commercial use must purchase and display in either the owner's or operator's place of business in order to legally operate the machine in the state.

(7.1) "Single play" or "one play" means the completion of a sequence of a game, or replay of a game, where the player receives a score and from the score the player can secure free replays, merchandise, points, tokens, vouchers, tickets, or other evidence of winnings as set forth in subsection (c) or (d) of Code Section 16-12-35. A player may, but is not required to, exchange a score for rewards permitted by subparagraphs (A), (B), (C), and (D) of paragraph (d)(1) of Code Section 16-12-35 after each play.

(8) "Sticker" means the decal issued for every bona fide coin operated amusement machine to show proof of payment of the permit fee.

(9) "Slot machine or any simulation or variation thereof" means any contrivance which, for a consideration, affords the player an opportunity to obtain money or other thing of value, the award of which is determined solely by chance, whether or not a prize is automatically paid by the contrivance.

(10) "Successful player" means an individual who wins on one or more plays of a bona fide coin operated amusement machine.

(11) "Temporary location permit" means the permit which every business owner or business operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally the machine or machines in this state for seven days or less. Such temporary location permits shall be subject to the same regulations and conditions as location licenses. (Code 1981, § 48-17-1, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1995, p. 10, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 563, § 2; Ga. L. 1999, p. 1223, § 1; Ga. L. 2001, Ex. Sess., p. 312, § 3; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 9, § 1-88/HB 1055; Ga. L. 2010, p. 470, § 1/SB 454; Ga. L. 2012, p. 1136, § 3/SB 431.)

The 2010 amendments. — The first 2010 amendment, effective May 12, 2010, added paragraphs (2.2) and (2.3). The second 2010 amendment, effective July 1, 2010, added paragraphs (2.2), (2.3), (3.1), (3.2), (7.1), and (9) through (11). See the Code Commission note regarding the effect of these amendments.

The 2012 amendment, effective May 2, 2012, in paragraph (2.2), at the end of subparagraph (2.2)(A), added ", does not allow a successful player to carry over points won on one play to a subsequent play or plays," and deleted "or", in subparagraph (2.2)(B), inserted "only" near the beginning and added a semicolon at the end, and added subparagraphs (2.2)(C) through (2.2)(E), and rewrote paragraph (2.3).

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-88, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides in part that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

48-17-2. License fees; issuance of license; display of license; control number; duplicate certificates; application for license or renewal.

(a) Every owner, except an owner holding a bona fide coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin operated amusement machine shall pay annual master license fees as follows:

(1) For Class A machines:

(A) For five or fewer machines, the owner shall pay a master license fee of \$500.00. In the event such owner acquires a sixth or greater number of machines during a calendar year which require a certificate for lawful operation under this chapter so that the total number of machines owned does not exceed 60 machines or more, such owner shall pay an additional master license fee of \$1,500.00;

(B) For six or more machines but not more than 60 machines, the owner shall pay a master license fee of \$2,000.00. In the event such owner acquires a sixty-first or greater number of machines during a calendar year which require a certificate for lawful operation under this chapter, such owner shall pay an additional master license fee of \$1,500.00; or

(C) For 61 or more machines, the owner shall pay a master license fee of \$3,500.00; and

(2) For any number of Class B machines, the owner shall pay a master license fee of \$5,000.00.

The cost of the license shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon said payment, the commissioner shall issue a master license certificate to the owner. The master license fee levied by this Code section shall be collected by the commissioner on an annual basis for the period from July 1 to June 30. The commissioner may establish procedures for master license collection and set due dates for these license payments. No refund or credit of the master license charge levied by this Code section may be allowed to any owner who ceases the operation of bona fide coin operated amusement machines prior to the end of any license or permit period.

(a.1) Every business owner or business operator shall pay an annual location license fee for each bona fide coin operated amusement machine offered to the public for play. The annual location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B machine. The annual location license fee levied by this Code section shall be collected by the commissioner on an annual basis from July 1 to June 30. The location license fee shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon payment, the commissioner shall issue a location license certificate that shall state the number of bona fide coin operated amusement machines permitted for each class without further description or identification of specific machines. The commissioner may establish procedures for location license fee collection and set due dates for payment of such fees. No refund or credit of the location license fee shall be allowed to any business owner or business operator who ceases to offer bona fide coin operated amusement machines to the public for commercial use prior the end of any license period.

(b) A copy of an owner's master license and the business owner's or business operator's location license shall be prominently displayed at all locations where the owner and business owner or business operator have bona fide coin operated amusement machines available for commercial use and for play by the public to evidence the payment of the fees levied under this Code section.

(c) Each master license and each location license shall list the name and address of the owner or business owner or business operator, as applicable.

(d) The commissioner may provide a duplicate original master license certificate or location license certificate if the original certificate has been lost, stolen, or destroyed. The fee for a duplicate original certificate is \$100.00. If the original certificate is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the certificate was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed certificate, if applicable, before a duplicate original certificate can be issued. A certificate for which a duplicate certificate has been issued is void.

(e) A license or permit issued under this Code section:

(1) Is effective for a single business entity;

(2) Vests no property or right in the holder of the license or permit except to conduct the licensed or permitted business during the period the license or permit is in effect;

(3) Is nontransferable, nonassignable by and between owners or business owners and business operators, and not subject to execution; and

(4) Expires upon the death of an individual holder of a license or permit or upon the dissolution of any other holder of a license or permit.

(f) An application for the renewal of a license or permit must be made to the commissioner by June 1 of each year.

(g) Acceptance of a license or permit issued under this Code section constitutes consent by the licensee and the business owner or business operator of the business where bona fide coin operated amusement machines are available for commercial use and for play by the public that the commissioner or the commissioner's agents may freely enter the business premises where the licensed and permitted machines are located during normal business hours for the purpose of ensuring compliance with this chapter.

(h) An application for a license or permit to do business under this chapter shall contain a complete statement regarding the ownership of

the business to be licensed or the business where the permitted machines are to be located. This statement of ownership shall specify the same information that is required by the application to secure a sales tax number for the State of Georgia.

(i) An application for a master license shall be accompanied by either the annual or semiannual fee plus the required permit fee due for each machine. Additional per machine permits can be purchased during the year if needed by the owner. An application for a location license shall be accompanied by the appropriate fee.

(j) An application is subject to public inspection.

(k) A renewal application filed on or after July 1, but before the license expires, shall be accompanied by a late fee of \$125.00. A master license or location license that has been expired for more than 90 days may not be renewed. In such a case, the owner shall obtain a new master license or the business owner or business operator shall obtain a new location license, as applicable, by complying with the requirements and procedures for obtaining an original master license or location license.

(l) A holder of a license who properly completes the application and remits all fees with it by the due date may continue to operate bona fide coin operated amusement machines after the expiration date if its license or permit renewal has not been issued, unless the holder of the license is notified by the commissioner prior to the expiration date of a problem with the renewal.

(m) Holders of location licenses and temporary location permits shall be subject to the same provisions of this chapter with regard to refunds, license renewals, license suspensions, and license revocations as are holders of master licenses. (Code 1981, § 48-17-2, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2010, p. 9, § 1-89/HB 1055; Ga. L. 2010, p. 470, § 2/SB 454.)

The 2010 amendments. — The first 2010 amendment, effective May 12, 2010, rewrote subsection (a) and added subsection (a.1). The second 2010 amendment, effective July 1, 2010, rewrote this Code section. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The

amendment of subsection (a) of this Code section by Ga. L. 2010, p. 9, § 1-89, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-17-9. Payment and collection of annual permit fee; permit stickers.

(a) Every owner, except an owner holding a coin operated amusement machine solely for personal use or resale, who offers others the

opportunity to play for a charge, whether direct or indirect, any bona fide coin operated amusement machine shall pay an annual permit fee for each bona fide coin operated amusement machine in the amount of \$25.00 for each Class A machine and \$125.00 for each Class B machine. The fee shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon payment, the commissioner shall issue a sticker for each bona fide coin operated amusement machine. The annual fees levied by this chapter shall be collected by the commissioner on an annual basis for the period from July 1 to June 30. The commissioner may establish procedures for annual collection and set due dates for the fee payments. No refund or credit of the annual fee levied by this chapter shall be allowed to any owner who ceases the exhibition or display of any bona fide coin operated amusement machine prior to the end of any license or permit period.

(b) The sticker issued by the commissioner to evidence the payment of the fee under this Code section shall be securely attached to the machine. Owners may transfer stickers from one machine to another in the same class and from location to location so long as all machines in commercial use available for play by the public have a sticker of the correct class and the owner uses the stickers only for machines that it owns.

(c) Each permit sticker shall not list the name of the owner but shall have a control number which corresponds with the control number issued on the master license certificate to allow for effective monitoring of the licensing and permit system. Permit stickers are only required for bona fide coin operated amusement machines in commercial use available to the public for play at a location.

(d) The commissioner may provide a duplicate permit sticker if a valid permit sticker has been lost, stolen, or destroyed. The fee for a duplicate permit sticker shall be \$50.00. If a permit sticker is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the permit sticker was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed permit before a replacement permit can be issued. A permit for which a duplicate permit sticker has been issued is void.

(e) Each permit sticker issued for a bona fide coin operated amusement machine which rewards a winning player exclusively with free replays, noncash redemption merchandise, prizes, toys, gift certificates, or novelties; or points, tokens, tickets, or other evidence of winnings that may be exchanged for free replays or noncash redemption merchandise, prizes, toys, gift certificates, or novelties, in accordance with the provisions of subsections (b) through (d) of Code Section 16-12-35 shall include the following: "GEORGIA LAW PROHIBITS THE PAYMENT OR RECEIPT OF ANY MONEY FOR REPLAYS OR MER-

CHANDISE AWARDED FOR PLAYING THIS MACHINE. O.C.G.A. SECTION 16-12-35.” (Code 1981, § 48-17-9, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 2; Ga. L. 1998, p. 563, § 5; Ga. L. 2010, p. 9, § 1-90/HB 1055; Ga. L. 2010, p. 470, § 3/SB 454.)

The 2010 amendments. — The first 2010 amendment, effective May 12, 2010, in subsection (a), in the first sentence, inserted “amusement” preceding “machine solely” near the beginning, substituted “an annual permit fee for each” for “a uniform annual permit fee of \$25.00 per” near the middle, and added “in the amount of \$75.00 for each Class A machine and \$150.00 for each Class B machine” at the end, substituted “for each bona fide coin operated amusement machine” for “for each \$25.00 payment for each coin operated machine” at the end of the third sentence, in the fourth sentence, substituted “shall be” for “will be” near the middle, and added “for the period from July 1 to June 30” at the end, and, in the last sentence, inserted “bona fide” preceding “coin operated” and “amusement” preceding “machine”, and substituted “license or permit period” for “calendar year” at the end; substituted “\$50.00” for “\$10.00” in the second sentence of subsection (d); and added subsection (e). The second 2010 amendment, effective July 1, 2010, in subsection (a), in the first sentence, inserted “amusement” preceding “machine solely” near the beginning, substituted “an annual permit fee for each” for “a uniform annual permit fee of \$25.00

per” near the middle, and added “in the amount of \$25.00 for each Class A machine and \$125.00 for each Class B machine” at the end, substituted “for each bona fide coin operated amusement machine” for “for each \$25.00 payment for each coin operated machine” at the end of the third sentence, in the fourth sentence, substituted “shall be” for “will be” near the middle, and added “for the period from July 1 to June 30” at the end, and, in the last sentence, inserted “bona fide” preceding “coin operated” and “amusement” preceding “machine”, and substituted “license or permit period” for “calendar year” at the end; and, in subsection (b), in the last sentence, inserted “in the same class” near the middle, and inserted “of the correct class” near the end. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a quotation mark was added at the end of subsection (e).

The amendment of subsection (a) by Ga. L. 2010, p. 9, § 1-90, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 3. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-17-11. Permit fees for additional machines; penalty fee.

If an owner purchases or receives additional bona fide coin operated amusement machines during the calendar year, the applicable annual permit fee shall be paid to the commissioner and the sticker shall be affixed to the machine before the machine may be legally operated. A penalty fee equal to twice the applicable annual permit fee shall be assessed by the commissioner for every machine in operation without a permit sticker. (Code 1981, § 48-17-11, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 3; Ga. L. 2010, p. 470, § 4/SB 454; Ga. L. 2010, p. 9, § 1-91/HB 1055.)

The 2010 amendments. — The first 2010 amendment, effective May 12, 2010, in the first sentence, inserted “bona fide”, inserted “amusement”, substituted “appli-

cable permit fee” for “\$25.00 permit fee”, and deleted “or placed at the location where the machine is located” following “affixed to the machine”; and, in the second sentence, substituted “for each bona fide coin operated amusement machine in the amount of \$1,000.00 for each Class A machine and \$5,000.00 for each Class B machine” for “of \$50.00” and substituted “being illegally operated with or” for “in operation” near the end. The second 2010 amendment, effective July 1, 2010, in the first sentence, inserted “bona fide” preceding “coin operated” and “amusement” preceding “machines”, substituted “applica-

ble annual permit” for “\$25.00 permit”, and deleted “or placed at the location where the machine is located” preceding “before the machine”, and substituted “equal to twice the applicable annual permit fee” for “of \$50.00” in the last sentence. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-91, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 4. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-17-14. Validity of prior existing obligations to state.

(a) All taxes, fees, penalties, and interest accruing to the State of Georgia under any other provision of this title as it existed prior to July 1, 2010, shall be and remain valid and binding obligations to the State of Georgia for all taxes, penalties, and interest accruing under the provisions of prior or preexisting laws and all such taxes, penalties, and interest now or hereafter becoming delinquent to the State of Georgia prior to July 1, 2010, are expressly preserved and declared to be legal and valid obligations to the state.

(b) The enactment and amendment of this chapter shall not affect offenses committed or prosecutions begun under any preexisting law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

(c) Nothing in this chapter shall be construed or have the effect to license, permit, authorize, or legalize any machine, device, table, or bona fide coin operated amusement machine the keeping, exhibition, operation, display, or maintenance of which is in violation of the laws or Constitution of this state. (Code 1981, § 48-17-14, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 2010, p. 470, § 5/SB 454.)

The 2010 amendment, effective July 1, 2010, substituted “July 1, 2010” for “January 1, 1993” in two places in subsec-

tion (a); and inserted “and amendment” near the beginning of subsection (b).

48-17-15. Limitation on percent of monthly gross retail receipts derived from machines; monthly verified reports; issuance of fine or revocation or suspension of license for violations; submission of electronic reports.

(a) As used in this Code section, the term:

(1) "Amusement or recreational establishment" means an open-air establishment frequented by the public for amusement or recreation. Such an establishment shall be in a licensed fixed location located in this state and which has been in operation for at least 35 years.

(2) "Business location" means any structure, vehicle, or establishment where a business is conducted.

(3) "Gross retail receipts" means the total revenue derived by a business at any one business location from the sale of goods and services and the commission earned at any one business location on the sale of goods and services but shall not include revenue from the sale of goods or services for which the business will receive only a commission. Revenue from the sale of goods and services at wholesale shall not be included.

(b)(1) No business owner or business operator shall derive more than 50 percent of such business owner's or business operator's monthly gross retail receipts for the business location in which the Class B bona fide coin operated amusement machine or machines are situated from such Class B bona fide coin operated amusement machines.

(2) Except as authorized by a local ordinance, no business owner or business operator shall offer more than nine Class B bona fide coin operated amusement machines to the public for play in the same business location; provided, however, that this limitation shall not apply to an amusement or recreational establishment.

(c) For each business location which offers to the public one or more Class B bona fide coin operated amusement machines, the business owner or business operator shall prepare a monthly verified report setting out separately the gross retail receipts from the Class B bona fide coin operated amusement machines and the gross retail receipts for the business location. Upon request, the business owner or business operator shall supply such monthly reports to the commissioner. The department shall be authorized to audit any records for any such business location.

(d) In accordance with the provisions of Code Section 48-17-4 and the procedures set out in Code Sections 48-17-5 and 48-17-6, the commissioner may fine an applicant or holder of a license, refuse to issue or renew a location license or master license, or revoke or suspend a location license or master license for single or repeated violations of subsection (b) of this Code section.

(e) A business owner or business operator shall report the information prescribed in this Code section in the form required by the commissioner. Such report shall be submitted in an electronic format approved by the commissioner. (Code 1981, § 48-17-15, enacted by Ga. L. 1999, p. 1223, § 2; Ga. L. 2010, p. 470, § 6/SB 454.)

The 2010 amendment, effective July 1, 2010, rewrote this Code section.

48-17-16. Penalties for violations by business owners or operators.

(a) For single or repeated violations of this chapter by a business owner or business operator who offers one or more bona fide coin operated amusement machines for play by the public, the commissioner may impose the following penalties on such a business owner or business operator:

(1) A civil fine in an amount specified in rules and regulations promulgated in accordance with this chapter; or

(2) For a third or subsequent offense, a suspension or revocation of the privilege of offering one or more bona fide coin operated amusement machines for play by the public.

(b) Before a penalty is imposed in accordance with this Code section, a business owner or business operator shall be entitled to at least 30 days' written notice and, if requested, a hearing. Such written notice shall be served in the manner provided for written notices to applicants and holders of licenses in subsection (b) of Code Section 48-17-5, and an order imposing a penalty shall be delivered in the manner provided for delivery of the commissioner's orders to applicants for licenses and holders of licenses in Code Section 48-17-6.

(c) In the case of a suspension or revocation in accordance with this Code section, the commissioner shall require the business owner or business operator to post a notice in the business location setting out the period of the suspension or revocation. No applicant or holder of a license or permit shall allow a bona fide coin operated amusement machine under the control of such applicant or holder of a license or permit to be placed in a business location owned or operated by a business owner or business operator who has been penalized by a suspension or revocation during the period of the suspension or revocation. (Code 1981, § 48-17-16, enacted by Ga. L. 2010, p. 470, § 7/SB 454.)

Effective date. — This Code section became effective July 1, 2010.

48-17-17. Local government to adopt any combination of a list of ordinance provisions relating to bona fide coin operated amusement machines.

In addition to the state regulatory provisions regarding bona fide coin operated amusement machines contained in Code Section 16-12-35 and

this chapter, the governing authority of any county or municipal corporation shall be authorized to enact and enforce an ordinance which includes any or all of the following provisions:

(1) Prohibiting the offering to the public of more than nine Class B bona fide coin operated amusement machines that reward the player exclusively with noncash merchandise, prizes, toys, gift certificates, or novelties at the same business location;

(2) Requiring the owner or operator of a business location which offers to the public any bona fide coin operated amusement machine that rewards the player exclusively as described in subsection (d) of Code Section 16-12-35 to inform all employees of the prohibitions and penalties set out in subsections (e), (f), and (g) of Code Section 16-12-35;

(3) Requiring the owner or possessor of any bona fide coin operated amusement machine that rewards the player exclusively as described in subsection (d) of Code Section 16-12-35 to inform each business owner or business operator of the business location where such machine is located of the prohibitions and penalties set out in subsections (e), (f), and (g) of Code Section 16-12-35;

(4) Providing for the suspension or revocation of a license granted by such local governing authority to manufacture, distribute, or sell alcoholic beverages or for the suspension or revocation of any other license granted by such local governing authority as a penalty for conviction of the business owner or business operator of a violation of subsection (e), (f), or (g) of Code Section 16-12-35, or both. An ordinance providing for the suspension or revocation of a license shall conform to the due process guidelines for granting, refusal, suspension, or revocation of a license for the manufacture, distribution, or sale of alcoholic beverages set out in subsection (b) of Code Section 3-3-2;

(5) Providing for penalties, including fines or suspension or revocation of a license as provided in paragraph (4) of this subsection, or both, for a violation of any ordinance enacted pursuant to this subsection; provided, however, that a municipal corporation shall not be authorized to impose any penalty greater than the maximum penalty authorized by such municipal corporation's charter;

(6) Requiring any business owner or business operator subject to paragraph (1) of subsection (b) of Code Section 48-17-15 to provide to the local governing authority a copy of each verified monthly report prepared in accordance with such Code section, incorporating the provisions of such Code section in the ordinance, and providing for any and all of the penalties authorized by subsection (d) of Code Section 48-17-15;

(7) Requiring the business owner or business operator of any business location which offers to the public one or more bona fide coin operated amusement machines to post prominently a notice including the following or substantially similar language:

“GEORGIA LAW PROHIBITS PAYMENT OR RECEIPT OF MONEY FOR WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR FREE REPLAYS WON ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING \$5.00 FOR A SINGLE PLAY OF THIS MACHINE.”;

(8) Providing for restrictions relating to distance from specified structures or uses so long as those distance requirements are no more restrictive than such requirements applicable to the sale of alcoholic beverages;

(9) Requiring as a condition for doing business in the jurisdiction disclosure by the business owner or business operator of the name and address of the owner of the bona fide coin operated amusement machine or machines;

(10) Requiring that all bona fide coin operated amusement machines are placed and kept in plain view and accessible to any person who is at the business location; and

(11) Requiring a business that offers one or more bona fide coin operated amusement machines to the public for play to post its business license or occupation tax certificate. (Code 1981, § 48-17-17, enacted by Ga. L. 2012, p. 1136, § 4/SB 431.)

Effective date. — This Code section became effective May 2, 2012.

Editor’s notes. — Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides, in part, that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the

intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

